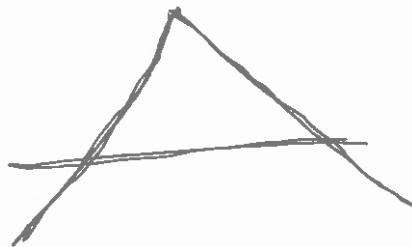


EXHIBIT



UNITED STATES DISTRICT COURT
WESTERN DISTRICT of NEW YORK

- CV -

Plaintiff

VS.

Defendants.

Affirmation in
SUPPORT of affirmed
verified Complaint

I, Dennis Bell #03R4363 being duly sworn,
doe~~s~~ hereby affirm Pursuant to the Penaltie's
of PERJURY Under the LAWS of united states of
america, and the most high God, that the Following
is true and accurate:

1. I am the above affirmand making this
affirmation in SUPPORT of the affirmed
VERIFIED Complaint.

2. I am a PRISONER being held under the Custody
and IN the CARE of the Department of Corrections
and Community SUPERVISION at southport
CORRECTIONAL Facility.

3. I make this affirmation on my own free will,
and ask nothing from this Court, OR the Plaintiff
in exchange for my sworn testimony.

4. On or about SEPT, 23, 2013, I was an inmate
housing at southport in C-block

On eleven Company when I formally met the Plaintiff MR. MARCUS KING.

S. Myself and MR. KING began to socialize and share Religious Ideals. MR. KING expressed he was a Muslim currently registered as a member of the nation of Islam. At that point an inmate a short distance away from us, began to yell disrespectful things to us about muslims. When we didn't response He yelled "don't WORRY I'll get you Racist son of a Bitches..."

6. I did not take his threat serious, until the following day he stopped a Correctional Guard named Luis Tillighast, Who IS known as an extremist in harassing inmates he didn't like, including stooping to squeezing their Butts & saying sexual things.

7. On or about Sept, 30, 2013, Luis Tillighast did Patfrisk MR. KING on the unit, and as I watched him through a small piece of mirror he fondled & Squeezed KING's PENIS saying something about knowing gay muslims. MARCUS KING became hostile & began to curse which angered MR. Tillighast, who then stated, "Okay you want to play it that way, I got you..."

8. On or about October, 8th, 2013, Superintendent Stephen Wenderlich made Routine Rounds and was stopped by myself, and MARCUS KING 3, was told about LUIS Tillighast giving Orders to his Informant to YELL Curses at us while we Prayed. as well as about him fondling 3 Squeezing MR.KING's Penis Making IMPROPER Sexual Comments.

9. After being made aware by MR.KING of the Problem with Guard Tillighast, Superintendent Wenderlich became belligerent Violently stating.

"I've been told this already... We've Investigated him several 3 none of these sexual allegations have been substantiated." When MR..KING Replied "Claims are almost always Investigated by a Friend of this Guard that is why... Why does no one ever review the video cameras".

The Superintendent Replied, "I'm tired of Investigating 3 dealing with Complaints about this Officers. My Officers just wouldn't do anything like this."

10. On or about OCT, 10, 2013, Guard Tillighast did approach Marcus King at shower with another Guard whom I Could not Identify. They Ordered him to step in for a search/patfrisk. When MR. King asked what this was about, Tillighast told him you went 3 Complained about me to the Superintendent, 3 told him I was gay.

11. The next thing I Heard was Marcus King being Roughed up In the Shower ~~area~~ by the two Guards, With more Guards ; a Sergeant Belz Running into his cell to search it.

12. Loud screams & thumping sounds could be heard from the showers. The sounds of Guards assaulting Mr. King Caused myself, & Other inmates to yell for them to get off of him. and hopefully Bring so Other higher Ranking Personnel to take charge of the situation.

B. I declare the above to be true to the best of my knowledge, and if needed, I will testify under oath in open court to each of the stated facts. as I would've testified to this at Tier III hearing if allowed to.

DATE: April 3 2014
Pine City, New York 14871

Respectfully sub
Dennis Bell #03R4363
-Signature -

PTXHIBIT

P

United States District Court
Western District of New York

- CV-

Plaintiff
vs ~

Defendants

Affirmation in
support of affirmed
verified complaint

I, Cornelius Redden #0B2658, being duly sworn does hereby affirm pursuant to the penalties of perjury under the laws of United States of America, and the most high God, that the following is true and accurate:

1. I am the above affiant making this affirmation in support of the affirmed verified complaint.
2. I am a prisoner being held under the custody and in the care of the Department of Corrections and Community Supervision at Southport Correctional Facility.
3. I make this affirmation on my own free will and of sound mind and ask nothing from this court or the plaintiff in exchange for my own testimony.
4. On or about January 10, 2014, I was an inmate housing at Southport in A-block on Seven Company when I met an inmate named Marcus King.

5. I began to socialize with the plaintiff a couple days after he moved into eleven cell, which was exactly next door to me, as I resided in ten cell. We realized at that time we shared the same religious beliefs as black muslims.

6. On or about January , 2011, as we were going through our daily reading of the Glorious QURAN a Correctional guard approached Mr. King's cell to serve him a misbehavior report.

7. At that time I introduced myself to the serving officer believing I MAY be able to assist Mr. King in preparing his defense. I advised the plaintiff Marcus King to request an assistant from the inmate disciplinary worksheet provided to him by the guard COON. The guard became belligerant getting upset, he began to berate Mr. King saying "Tell your fuckin' buddie over here to mind his own business, he's not a lawyer... and it doesn't matter NO way, the hearing officer we selected for you is one of our boys, you have NO chance!"

8. In spite of all the things that was stated by COON the serving guard Marcus King followed my advise and selected an assistant from the list. On January 14, 2014 Marcus King's selected inmate assistant did show up to his cell to take all of his request.

9. Almost immediately after the assistant had shown up and questioned Marcus King in depth in regards to his retaliation defense. Several guards each day during recreation run continued to walk up to Mr. King's cell and pound on the gate yelling threats that they were going to give him a new prison case - or beat him if he went to his hearing and allege that Louis Tillighast did anything sexual to him. These threats were so constant and violent I was afraid for him as well as myself at this time. I did inform Marcus King to write to the inspector general's office and tell them what was going on.

10. When his grievances and letters complaining about the guards' actions began to be investigated I overheard Sergeant Belz tell Mr. King that if he attend his tier hearing that what had transpired before is going to happen again but the difference with this time is that he may not be able to sit down or walk for awhile... at that time I learned a correctional guard had stuck his finger inside Marcus King's rectum and made sexual innuendos to him.

11. ON January 23, 2014 I observed an escort guard kick Marcus King's cell door, he then yelled at him "you're suppose to go to a hearing but I know your not dumb enough to make us have to do more paper work on you". Another guard came to join in saying "you going coward?" He also spoke about Marcus King getting a new charge and a larger stint back in the dungeon which is known as D-block which is an enhanced restraint box or a "box ~~in~~ a box" for prisoners

who are targeted or labeled trouble makers by Southport Correctional guards.

12. These guards went and told the hearing officer that Marcus King refused to attend the hearing although they knew this was a lie. Marcus King and I began to rattle our gates and call for the hearing officer to come down to our cells and speak to us himself so we could advise him of what was going on.

13. This hearing officer heard our voices calling for him but instead of coming down to us he stopped at the head of the compound and spoke to the guards. A moment later he walked off and never returned to speak to me or Mr. King about the actions of the guards. Mr. King was later given a written decision from the hearing officer alleging he refused to appear at the tier hearing, and was guilty of the penalties lodged against him.

14. I personally observed all of the aforementioned actions transpire and will testify in open court under oath to all of the above.

Dated: April 10, 2014
Pine City, NY 14871

Castellus Fadden

EXHIBIT

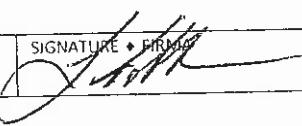
C

Southport Correctional Facility**INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO**

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre)	NO. ♦ NÚM.	HOUSING LOCATION ♦ CELDA
King, Marcus	12A1122	C-11-19
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE	INCIDENT DATE ♦ FECHA	INCIDENT TIME ♦ HORA
C Block, 3rd floor, 11 Gallery, 3 Shower	10 October 2013	Approx 11:15 am
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES		
113.10 Weapon		
114.10 Smuggling		

4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE

On the above date and time while conducting a pat frisk of inmate King (12A1122), I felt an unusual bulge in the inmate's rectal area. The area supervisor authorized a strip frisk. The inmate was moved to the number 3 shower on C11 gallery and I conducted a strip frisk. During the strip frisk I saw a white package between the inmate's buttocks. I had the inmate remove the package with his left hand. Inmate King complied with my order and handed the package back to me. I recovered the package and completed the strip frisk. I searched the package and found a small folded piece of paper that contained green leafy material. I turned that material over to CO J. Robinson for testing. Also in the package was a ceramic razor type weapon. The razor was white in color and approximately 1 ½ inches long by 3/8 inch wide. The razor weapon was wrapped in paper and tape that was constructed as a holster and handle. The inmate was moved to D-M-33 without further incident. Photos taken and copies made, the original evidence was secured per directive 4910a.

REPORT DATE ♦ FECHA 10-10-2013	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME L. Tillinghast	SIGNATURE ♦ FIRMA 	TITLE ♦ TÍTULO CO
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESS (if any) ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)		SIGNATURES: FIRMAS: 1. _____ 2. _____ 3. _____	

NOTE: End back Page 2 on dotted line before completing below.

DATE AND TIME SERVED UPON INMATE _____ NAME AND TITLE OF SERVER _____
FECHA Y HORA DADO AL RECLUSO _____ NOMBRE Y TÍTULO DEL QUE ENTREGA _____

You are hereby advised that no statement made by you in response to the charges or information derived therefrom may be used against you in a criminal proceeding. ♦ Por este medio se le informa que no se puede usar ninguna declaración hecha por usted como respuesta al cargo o la información derivada de ella en una demanda criminal.

NOTICE ♦ AVISO**REVIEWING OFFICER (DETACH BELOW FOR VIOLATION HEARING ONLY)**

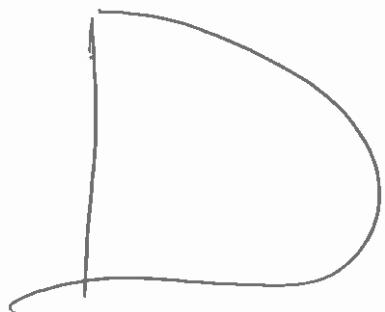
You are hereby notified that the above report is a formal charge and will be considered and determined at a hearing to be held. ♦ Por este medio se le notifica que el informe anterior es un cargo formal el cual se considerará y determinará en una audiencia a celebrarse.

The inmate shall be permitted to call witnesses provided that so doing does not jeopardize institutional safety or correctional goals. ♦ Se le permitirá al recluso llamar testigos con tal de que al hacerlo no pondrá en peligro la seguridad de la institución o los objetivos del Departamento.

If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement. ♦ Si está restringido pendiente a una audiencia por este informe de mal comportamiento, puede escribirle al Diputado del Superintendente para Seguridad o su representante antes de la audiencia para que haga una declaración acerca de la necesidad de continuar bajo confinamiento, previo a la audiencia.

Distribution: WHITE - Disciplinary Office CANARY - Inmate (After review) ♦ Distribucion: BLANCA - Oficina Disciplinaria AMARILLA - Recluso (despues de la revision)

EXHIBIT



Southport Correctional Facility**INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO**

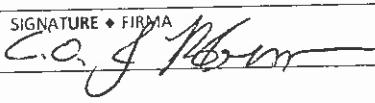
1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre)	NO. ♦ NUM.	HOUSING LOCATION ♦ CELDA
King, Marcus	12A1122	C-11-19
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE	INCIDENT DATE ♦ FECHA	INCIDENT TIME ♦ HORA
Drug Testing Room	10/10/13	2:00pm

3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES

113.25 An inmate shall not posses any narcotic or contolled substance or marijuana

4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE

On 10/10/13 at 1:15pm I, co J.Robinson, received a green leafy substance from c.o. Tillinghast that he found on inmate King 12A1122. I took the substance to the drug testing room to be tested. I weighed the substance and the amount was 0.2 grams, I then took photos of the substance. I, c.o. J. Robinson, then tested the substance using NIK test kit E were a Purple blue-violet color developed indicating the presence of Marijuana. At 2:00 pm after using the NIK Polytesting System it was determined that the substance material is in fact Marijuana. There was no substance left after testing.

REPORT DATE ♦ FECHA 10/10/13	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME J. Robinson	SIGNATURE ♦ FIRMA 	TITLE ♦ TÍTULO C.O.
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESS (if any) ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)		SIGNATURES: FIRMAS: 1. _____ 2. _____ 3. _____	

NOTE: Fold back Page 2 on dotted line before completing below.

DATE AND TIME SERVED UPON INMATE

NAME AND TITLE OF SERVER

FECHA Y HORA DADO AL RECLUSO

- NOMBRE Y TÍTULO DEL QUE ENTREGA

You are hereby advised that no statement made by you in response to the charges or information derived therefrom may be used against you in a criminal proceeding. ♦ Por este medio se le informa que no se puede usar ninguna declaración hecha por usted como respuesta al cargo o la información derivada de ella en una demanda criminal.

NOTICE ♦ AVISO**REVIEWING OFFICER (DETACH BELOW FOR VIOLATION HEARING ONLY)**

You are hereby notified that the above report is a formal charge and will be considered and determined at a hearing to be held. ♦ Por este medio se le notifica que el informe anterior es un cargo formal el cual se considerará y determinará en una audiencia a celebrarse.

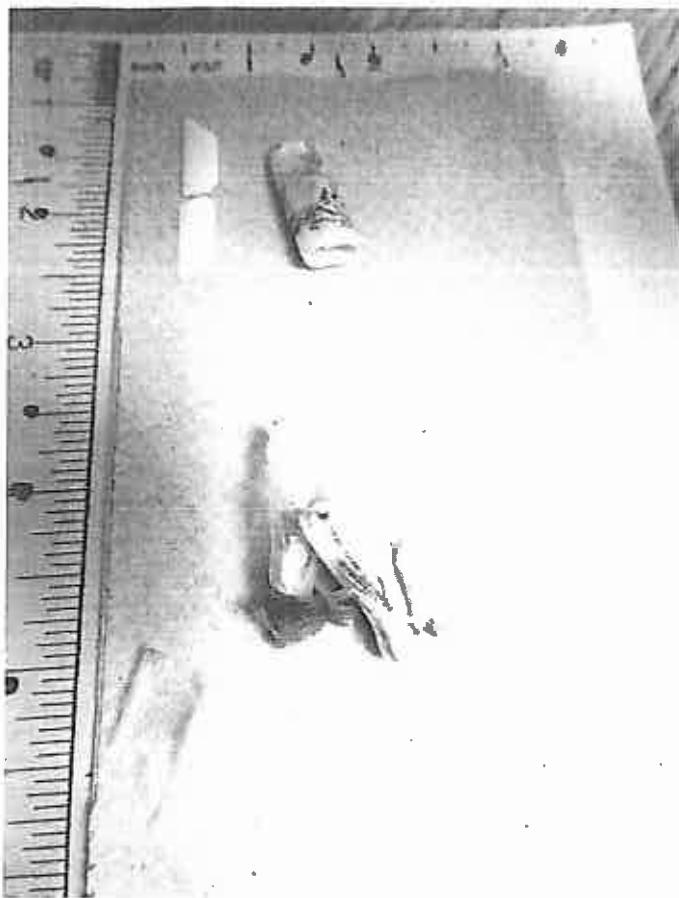
The inmate shall be permitted to call witnesses provided that so doing does not jeopardize institutional safety or correctional goals. ♦ Se le permitirá al recluso llamar testigos con tal de que al hacerlo no pondrá en peligro la seguridad de la institución o los objetivos del Departamento.

If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement. ♦ Si está restringido pendiente a una audiencia por este informe de mal comportamiento, puede escribir al Diputado del Superintendente para Seguridad o su representante antes de la audiencia para que haga una declaración acerca de la necesidad de continuar bajo confinamiento, previo a la audiencia.

Distribucion: WHITE - Disciplinary Office CANARY - Inmate (After review) ♦ Distribución: BLANCA - Oficina Disciplinaria AMARILLA - Recluso (después de la revisión)

EXHIBIT

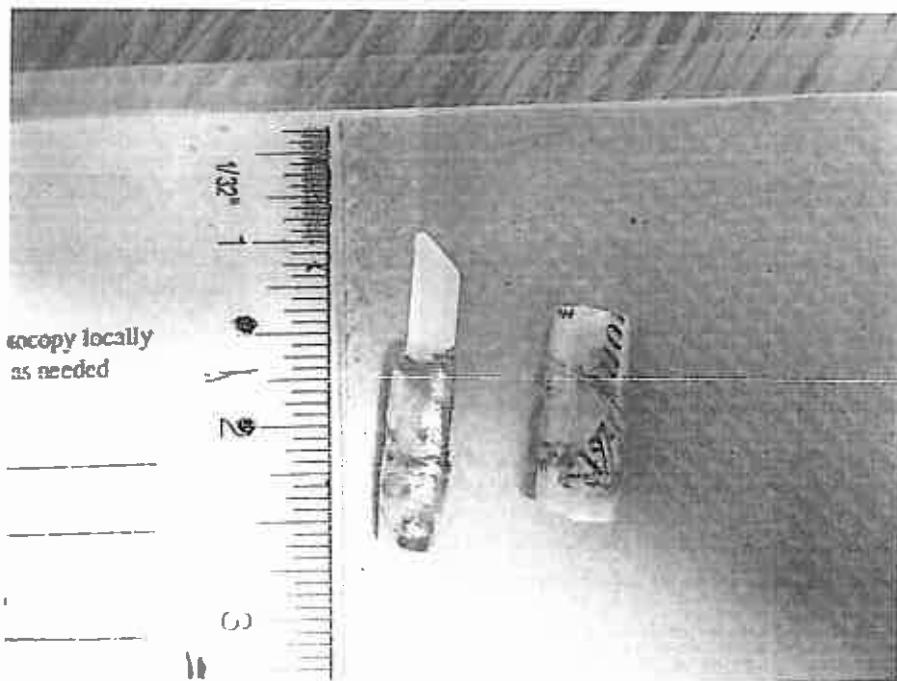
E



UI# 13-0055 10-10-13 11:15 AM



INMATE KING, M. 12A1122 C-11-19



PHOTOS BY C.O. TILLINGHAST

Contraband/Evidence Photograph Card

Item Description: Green /empty subseques

Date/Time Found by: 1999145001 Trilayhaast

Facility Contraband/Evidence Control #: DIN # 1291122

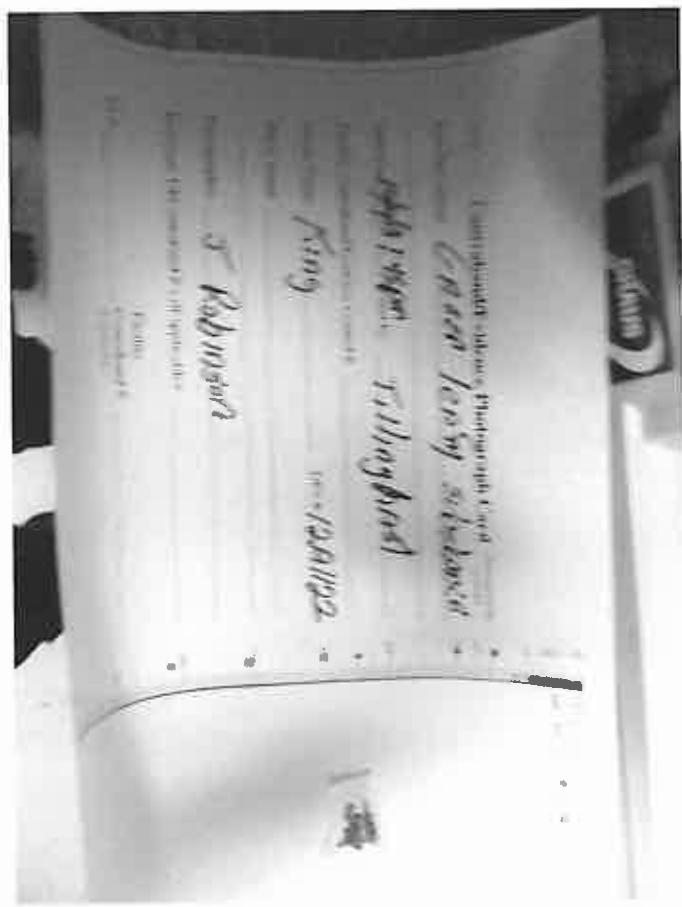
Inmate Name: King

Where found:

Photographer: J. Robison

Electronic I/M Contraband #'s (if applicable):

Facility Contraband #:
If applicable



EXHIBIT

T

1st appeal

Mr. Albert Prack

1/1/10

Type 013-444

was present during

the time the defendant
was caught and during
the trial.

On May

Marching 6th

I was engaged by the following individual
to do the following:

Huntington Hospital for the

Department of Health

list of names & relatives

of Mr. John W. Richards and his son, Mr. James, and wife Alice and Mr. Charles
Lundström. In accordance with the above, I do the following request
that you see and receive my application through the zoning department on
February 12, 2010 and I would like to be in touch with the Zoning Department
until the 24th of February. The following names, Richard, Linda, Charles, and Charles
Lundström, C. Lundström, J. L. and C. Lundström. I have found nothing
else at this time.

I believe the following individuals were connected during my hunting:

Daniel J. Heiglauer

John W. Richards



On the date of 1/1/10 I visited address 700 N. York St. #204. I provided
Mr. (A) with a written request to Adm. Mr. J. Heiglauer whether he
would supply evidence that I previously owned a house or property
herein which is a 10' x 10' garage with 2 windows, 1 door, 1 window,
1/100 square feet of floor space, 10' x 10' garage with 2 windows,

Demand Determinants

My son had a right and a left ear and right ear was the one
healed in all 4 weeks or so it was. At you were still hearing
nothing I finally asked my MD if he thought he had a brain
tumor. He looked at me and replied when you have had a bullet
hit you again how do you know it's the bullet and the most
likely to hit my brother. Determined to still be treated we drove to
Jewell Hospital at 4:30 of 10-4-2 and 30 min away. They had a doctor
there Dr. S. J. V. Compte 44-1-2-10-6-9 and of N.Y.S. 2d 112
Marked below and 301 102 301 D.N.Y. 1004)

Upon settling beneath Webster's Bluff, in Dec. 1824 and Feb. 1825
and in a short time I had on my behalf sent to him several letters
stating my political goals. In which there was allowed to be fully expressed
my desire for us to have a free opportunity to present our views. In response however I
was told that Webster in his V. T. Debates had stated that he did not
trust, I pray you, me and (H. D.) that I could share a question

(cont.)

for last 1 month, which did the government consider had been informed to me by Mr. S. and he may be fully aware which is misleading and I do not feel it is proper to make it public now. This goes to what happened and what was done and what was done in a secret meeting or secret location where they were to have been speaking regarding his handle at the International meeting.

I will follow up with you and get the letter I wrote saying my and your request made to the subpoenas that you requested from the court and you can find it on the court's website through the case United States v. Christopher S. Steele, et al., Case No. 14-cv-06491-FPG.

The court will be sending a copy word when right to and when and what to allow, which I believe is known and being considered. I am not able to hearing must be provided see White v. Carter, 401 U.S. 173, 343 F.2d 101, 104.

In the meantime, I requested Christopher S. Steele who worked on the defense Report until 4/1 to write him in a full honest & revealing manner what he said above about my wife that you have written. I am sorry for his response to you that I learned he is in the C.I. holding back to the court which read up on the being Deposed a number of times before and after our Deposition at the Plaintiff's home with some help of Mr. Carter, see also 11-03-01. Christopher Steele has been alleged to have by an inmate to make a request to say as the Deposed testimony is not relevant information or could pose a threat to national security see White v. Carter, 401 U.S. 173, 343 F.2d 101, 104, 105.

Here I requested on the Deposee answer that my legal representative to tell a d.o. at the hearing of any fact, I do apologize I am not a Government or having any other type of affiliation or having any of the following or soft. Delz who asked the Deposee to the meet a result of my personal self was the he alleged confidential documents he named. you are hearing

(4 pages)

through my wife to my children will get a civil injunction
 along with a right to sue the state of New York against the
 law and the people involved in the incident & I am in
 support of it and would support the law if it were
 to be ruled by the court to be unconstitutional according to statute.
I agree with Plaintiff's Motion to Dismiss (Dkt. No. 101).
Please let me know if you have any further questions.

To make up a short version I would like having
 you to file a motion to Dismiss the Plaintiff's Motion to Dismiss
 as opposed to the original cause of action. Please and you
 will presented it to me at a hearing before the Hon. J. A. Byrne
Jr.

Please, I was very pleased in opportunity to defend this
 issue on my behalf and I am still committed to your cause
as I am the only one who has been involved in this case.
As I am the only one who has been involved in this case.

The issue before us is that Plaintiff has sued you for
 denial of my right of habeas corpus and sustained
 the territorial separation that relating my life prison commitment
President R. F. W. C. C. 1964 ¹⁹⁶⁴ to the State of New York
for the period of time from 1964 to 1968. in fact in the case,
the Supreme Court does not have the power to determine
the validity of the conviction. Plaintiff's Motion to Dismiss
should be granted. Plaintiff's Motion to Dismiss should be granted.

However, the female right to all men has been held as a
 basic principle and in my opinion P. M. L. D. 1964
legislature has not been legislated to allow any female

to have any right to all men. I will not support any law
that allows any female to have any right to any male.

(5 of 6)

T Record

With these circumstances it does not seem to make sense to proceed with the
listing of a defendant. I would like you to consider that if we do proceed with
a defendant or hearing, he would be in the position to be a
"friendly" witness. I would "charge" him to take a stand like
"Sandra Morris" (70) has informed him can best change his story and what
he claims that Wilson gave the "golden hand" machine to Wilson
by giving her the value of his bond as my requested when switching
(N.Y.L.A.R. 82545a).

Whale song report form

MW Doc

Chrysanthem.

I probably didn't tell
the truth very well
and that's why I was
sent home - good
for 45 days - 0000
15/07/12

(MBR) possession

To: Plaintiff

Plaintiff's attorney

Re: 2013

an information

plaintiff's attorney

Aug. 14, 2014

I will discuss my facts with you at

the moment of trial

beginning with the charge of

the "D" Park

from that ended one of my cases

and I am not able to provide you with the original report or what I have respect to opponent but

in my opinion he is not guilty of this.

As I mentioned above I expect to charge you with

the charge of a reasonable amount of time
as the plaintiff did not fully get a full time report
written by C. J. Robinson to allegations causing a great bodily
harm which he, needed to have been but I do not believe
a true statement of substance from his person. The statement report
written by C. J. Robinson failed to provide all with adequate
time to the charge to make me to prepare a meaningful
defense as it was not delivered to the body or the report the
plaintiff from his file charge with enough particularly to make
the best defense and without sufficient time to prepare an effective
defense.

The respondent reported he was at the
incident. The bag is my hand writing piece of hardware
and is a bag which has been up at the airport. He report
he had a witness in his possession to have forward the green
bag witness which according to a database listed for one
for him name. The New Jersey Report further by the witness
stated as one of incident is a bag of incident by back or
indirect means the bag date and time a moment extremely
similar to when the witness said the green bag published
and when he parked the bag to the parking machine to make a return
to park early morning & as it is a fact Plaintiff and
only a few hours earlier witness stated between opinion
of Plaintiff alibiing as he remained the facts of the incident
that will no way be present or altered material.

I N.C.P. #3 and 31.3 section of the regulation
law and the New Jersey Report now set forth the date time
and place of the offense the foregoing rule clearly regulated with
the judicial officer the charge as follows which
obliged to make the inmate to prepare a defense. with the above
I and the County Sheriff and Capt. J. Robinson clearly violated my
constitutional rights. An example to this in Matter of Simmons v.
Foster (No. A-7-3-11-604 dated Dec 1 2013) also going Matter of
Bartlett v. Combe et al. No. S-1-0911-1 Sept 17 2013. In Court
it will of the determination of go to trial without all references to the
Plaintiff as my I knew a Plaintiff without trial I would.

In addition

2nd Appeal

Handwritten appeal to the

Lockport Correctional Facility

Lockport, NY

Letter to the

William J. Burke

Albany, NY

Date 10/10/14

I am hereby appealing his Determination of the following specific facts herein:

Hearing date: 1/23/14 after 1/2/14/14

Date of disposition: 1/4/14

Date of incident 10/10/14

During the time I did not have the recommended less of guard time, snatched less of phone, commissary, packages, I snatched less of all visitation and 3 months confinement to solitary. In accordance with section 2.4.8 of Title 1. N.Y.C.C.R, I request that you review and reverse my superintendents hearing. The hearing commenced on 1/23/14 at 3:00 pm and I was unlawfully deprived of the right to appear at my hearing, either a defense and comment on the charges and evidence. I was found guilty of the charges: 113.10 Improper and 113.10 Saucaging in a. Misbehavior Report signed by C.O. T. Ellington and Charge: 113.25 Drug possession in a cell signed by C.O. T. Ellington. The following witnesses testified: sqd. Spwright on 1/23/14, C.O. Robinson and C.O.T. Ellington both on 1/24/14.

Statement of Facts

On 10/10/14 while lawfully housed in C block 3rd Floor 11 gallery located in Lockport. I was made to sit slided back to back I was met by C.O. T. Ellington and C.O. Kelly at the entrance of #3 shower. I was given a shirt to face the back of the shower wall. I complied and was hit, struck and

punished about the Facial and torso was causing me to sustain a chipped tooth. Disfigurement of my upper right front tooth and other injuries. I was diverted to (1) my leg one at a time so that both above mentioned officers can remove my underwear so that C.O. Tillinghast can perform an illegal and unlawful "Body Cavity Search". C.O. Tillinghast forceably stored his finger(s) inside my rectal cavity multiple according to Directive #14910 control of search for contraband Section (1) 2 Authorization @ "a body cavity search shall be conducted by a Facility Physician under central CPO's physician guidance". The operative facts of C.O. Tillinghast Report alleges "On the above date and time while conducting a pat frisk of inmate King (12A1122), I felt an unusual bulge in the inmates rectal area". C.O. Tillinghast goes on and states in this same Report "During the strip frisk I saw a white package between the inmates buttocks". This Rep. is false, incredible and does not coincide with ordinary human experiences! There's possibly no way C.O. Tillinghast would've ever been able to feel a bulge between my rectal area during a "pat frisk" while only being clothed with just underwear unless C.O. Tillinghast indeed conducted an illegal body cavity search and forceably stuck his hands into my private areas while I was still mechanically restrained in the shower! After, I was immediately escorted to the isolation Drug/contraband watch room by these (2) officers and stripped of my clothing and placed in D.M-33 cell where I was compelled to provide Detoxification samples for 7 days which were negative for any contraband. as of such occurrence I was subsequently "set up" with the above mentioned charge I was retaliated against and falsely accused of charges that stem from a quarrel that took place a week prior to the incident date of 10/10/13 between myself and C.O. Tillinghast. C.O. Tillinghast Deprived me of my right to participate in Daily recreation without any reason which lead up to an exchange of words I was then threatened and told that he'll "come back and get me". In attempt to substantiate my claims I requested witnesses on my behalf and recreation log that prove C.O. Tillinghast had recreation first and that I in fact requested recreation but wasn't

I afforded this constitutional right.

I believe that the following procedural violations occurred during my hearing:

This behavior Report (Incident Specification)

Of the particulars authored by C.O. Robinson

Fundamentally, I N.Y.C.R.R § 251.3.1(e)(1) provide that "the misbehavior report shall include the following... A written specification of the particulars of the alleged incident & misbehavior that occurred." The Misbehavior Report must describe with particularity an incident which the author claims to have witnessed and the rules alleged violated; see Kymani v. Caughrin, 77 N.Y.2d 642 (crt. app. 1991) and see Mother Rabens v. Mann, 55 N.Y.2d 113 (crt. app. 1995).

I am challenging the insufficient notice of charges as to the charge of possession of Marijuana. I was found guilty of a (WKR) written by C.O. Robinson for allegedly possessing a green leafy substance that was handed to him by C.O. Tillinghast who alleges to have recovered such substance from my person. The (WKR) written by C.O. Robinson failed to provide me with adequate notice of the charges to enable me to prepare a meaningful defense as it was not detailed in the body of the Report the factual basis for the charge with enough particularity to enable me to identify and marshal pertinent facts to prepare an effective defense.

The (WKR) listed the location of the incident as the "Drug testing Room" with my name and numbers placed in a designated line on the top of the report.

The Report failed to establish also the connection between me and the substance. The (WKR) written by C.O. Robinson omitted (A) Time of incident (B) place of incident (C) Date of incident (which the report date and time of incident) Exclusively referred to when C.O. Robinson received the substance and when he operated the drug testing machine and finally (D) The record clearly reflects in a prior hearing proceeding that upon cross examination C.O. Robinson never ascertained the facts of the incident whatsoever, nor was he present or observed the incident.

T.N.Y.C.R.R § 251-3.1(d) section of the regulation provides that the (MER) must set forth the date, time and place of the offense. The Disciplinary rule alleged violated and the factual basis for the charge with enough particularity (details), to enable the inmate to prepare a defense". With the above in mind the hearing officer and C.O. Robinson clearly violated my Due Process Rights. In a similar issue in the Matter of Simmens v. Fischer, 963 N.Y.S.2d 1069 (3d Dept 2013) also citing Matter of Hakeem v. Coombie, 650 N.Y.S.2d 314 (3D. Dept 1996) The court annulled the Determination of guilt and Ordered all references to the charges expunged from petitioner's institutional records.

Additionally, pursuant to T.N.Y.C.R.R § 251-3.1(b) and (c)(3) Misbehavior Report, (1) the MER shall be made by the employee who has observed the incident or who has ascertained the facts of incident (c)(3) The MER shall include the following: The Date, Time and place of the incident

In prior hearing proceeding C.O.J. Robinson Testified on Record that he did not observe the "incident" see Thawad v. Coniglian, 190 A.D.2d 1090 (4th Dept 1993) (The appellate Division held the Misbehavior Report that merely, identified Date of incident and thus ~~therefore~~ did not comply with Regulation requiring the Report to include Date of incident and Thus disciplinary determination was Properly annulled) Davis v. Coniglian, 200 A.D. 904 (3d Dept 1997) (the Third Dept held that MER did not comply with T.N.Y.C.R.R 251-3.1(c)(3) because it failed to state date and time or even period within which inmate allegedly interfered with Employee, verbally harassed Employee and made false statements and should have been annulled)

The Regulation Requiring the MER to include the specific Time and Location of the incident is designed to safeguard an inmate's Due process right to advance notice of the alleged violation... The Report must be sufficiently detailed to afford an opportunity for preparing a defense; Meekay v. Lefevre, 98 A.D.2d 566, 568; Wolf v. McDonnell 418 U.S 519 (1971)

In furtherance, New York State D.O.E.s has promulgated in T.N.Y.C.R.R

§ 1010.5 which governs the use of such Test Results and set forth the specific documents that must be made part of the record at the disciplinary hearing:

- (A) the request for test or suspected Marijuana Drug, form
- (B) The Centralized Test procedure form
- (C) the test report prepared by and outside agency subsequent to testing of the substance;
- (D) any statement of the scientific principles and validity of the testing materials and procedures used
- (E) A photocopy of the individual Test test instructions for each test used.

Here, the hearing officer D.S.S. Lanuanna Reveals in his Disposition a statement of the scientific principles and validity of the testing materials and procedures used or the photocopy of the individual test instructions. No drug test was not provided to me nor were they made apart of the hearing record. A proper foundation was not laid and that proper testing procedures were not allowed; see Booker v. Lanza, 72 A.D.3d 1369 (3d Dept 2010) (no proper foundation was established for an admission of the positive NIK test result. where no statement of the scientific principles and validity of the Testing Materials and procedures used was admitted into evidence at the hearing or provided to the inmate and there was no testimonial evidence of the procedures used by the testing officer.) see also Luongo v. Lanza, 444 A.D.3d 1066 (3d Dept 2007).

Presence at hearing Denied

N.Y.C.R.R. 254.6 (A)(2) provided that "the inmate shall be present at the hearing unless he or she refuses to attend, or is excluded for reasons of institutional safety or correctional goals". An inmate has a fundamental right to be present at his or her Disciplinary hearing Rush v. Guard, 770, N.Y.S.2d 191, unless he or she waives such right or refuses to attend. Here, I did not refuse or waive my right to attend my hearing nor was it a threat to the institutional safety or correctional goals. I've attended and participated in this hearing to continue pursuit of my rights and in

Requested Employee assistance for His Re hearing.

The hearing Officer failed when he did not make any (17a)s to ascertain whether or not I actually refused to attend the hearing. Nor did he attempt to make any inquiry to determine if I willfully refused to attend the hearing as he alleges in his Disposition. In fact Plaintiff never asked if I wanted to attend such by hearing by C. Johnson or Sgt. Springstig as alleged in the Disposition created by (H.O.) D.S.S. Lanamura. (H.O) alleges in his Disposition that (a) I failed to give any reason for not attending and (b) alleges that he "personally" spoke with me at my cell regarding my refusal and still failed to state the reason. Is why I allegedly "waived my right to attend after he "personally" spoke with me is because this alleged communication NEVER happened!! (why would I waive to attend my hearing after I've participated in every part of the proceeding???)

Furthermore, if an inmate refuses to attend his hearing, he must be advised of the consequences for his failure to attend (such as the hearing will continue in his absence). See Taylor v. Setsky, 26 N.Y.2d 306 (21 Dept 2007) "Without evidence that petitioner was so advised, the record does not establish that [he] knowingly and voluntarily waived his right to attend and the (H.O) should not have held the hearing in his absence." It's clear that my Due Process right provided in I.N.Y.C.R.R § 541.6(a)(2) to attend my hearing was violated and such hearing Disposition created by H.O must be reversed and Expunged from my institutional record. I was not provided an opportunity to sign a hearing refusal form... (H.O) never personally communicated with me concerning this alleged refusal and I did not make a knowingly, Voluntarily and Intelligently waiver of my right to attend hearing.

① Deprived of adequate
Employee assistance

Inmate charged, to explain the charges to the inmate, interview witnesses and to report the results of his efforts to the inmate. He may assist the inmate in obtaining Documentary Evidence or written statements which may be necessary... this, I provided my employee assistant Sgt. Chapman with a written request to provide me (with up to 15) guests including a copy of the unusual incident Report, Roster action Log, Tapes (if possible), To interview witnesses and all witness forms. To this request, my (L.A.) I refused to provide her with any Documentary Evidence. Returning back to her a copy of my (L.A.) then request of assistance written in his hand - he live in Real MK stating the reasons for why my requests are being denied.

No (L.A.) assistant told me that he not interviewing anyone and that I have already carried requested documents privately at another hearing proceeding. I've explained to my (L.A.) that upon being moved to the New cell location within the Facility I've lost those requested documents in the process of moving and that I have never received certain documents. Nothing in the record will reflect that my (L.A.) interviewed any of the indicated witnesses or provided me with any requested documents. In fact, it is evident that I've refused to sign the (P.A.) form acknowledging that my assistance assisted as requested and satisfactory. As a matter of law in the matter of Eng v. Caugliari 850 F. 2d 149 1981 (D.C. 1981) The court held in its Jurisprudence that prison authorities have a Constitutional Obligation to provide assistance to the inmate in gathering evidence, obtaining Documents and relevant Tapes and interviewing witnesses.

With the above in mind, my Due process Rights under T.N. § 87(2)(b) was violated. further, the court held that the inadequate assistance had impaired the petitioners ability to present a defense, annulled the hearing and ordered that all references to the charges be expunged from petitioners records. See County v. Fisher, 946 N.Y.S.2d. 704 (2013 3d Dept)

Unlawfulness

Section (b) of T.N.Y.C.R.R. 251.5.1 provides that the disciplinary hearing or superintendent's hearing must be completed within 14 days "within the hearing of the misbehavior report unless otherwise authorized by the Commissioner. (as designed)." It is also noted to all superintendents, indicating that a rehearing is to be conducted within the same time frame as an initial hearing, pursuant to T.N.Y.C.R.R 251.5.1(b). Here, the record indicates that the Facility Superintendent of Seaford C.R. received notice^{14th} from Mr. Albert Prack, Clerk, a new hearing at least on January 9, 2014 and so ordered that the hearing be commenced and completed within 14 days of the receipt of such notice.

The hearing officer alleges that hearing was commenced and completed on 1/13/14 at 3:00 pm on page (1) of said disposition thus satisfying the requirement of T.N.Y.C.R.R 251.5.1(b). However, on page (2) of disposition rendered by Hearing Officer D.S.S. Lannan, it denotes that said hearing was completed on 1/24/14 thus violating the 14 day time requirement provided in T.N.Y.C.R.R 251.5.1(b) and the notice provided by Mr. Prack. My R. hearing proceeding was not completed in a timely fashion according to the witness inmate notice form provided by the DOB which states C.O. J. Robinson and C.O. Tillington did not testify until 1/24/14 making it past the 14 day requirement. The record would reflect any extension granted in this proceeding.

In the matter of Bruce Hawkins v. Scully, 536 N.Y.S.2d 846, 146 A.D.3d 627, (N.Y.A.D. 2 Dept. 1989) The Supreme Court appellate division held that: Rehearing was not held within applicable time period, and charges against inmate had to be dismissed. See DeJuler v. Scully, 110 A.D.2d 671, 487 N.Y.S.2d 401; Lozada v. Scully, 108 A.D.2d 859, 485 N.Y.S.2d 571 and Grosvenor v. Delsheimer, 90 A.D.2d 1139, 444 N.Y.S.2d 533).

Conclusion

Please take into consideration the harsh and excessive penalties imposed, the Adversarial and repetitive violations of Due Process and the many contradictions of the reports relied upon and testimony given by Division officials. I was denied a full and fair hearing and Impartial (110) pursuant to T.N.Y.C.R.R § 23.1(b). By way of relief, despite of a colorable claim of innocence in all proceedings regarding his matter, a full and fair reversal and expungement should be upheld at a high level of review. Please listen to the Tape recording of my Superintendent's hearing and refile my appeal decision.

Hospitality submitted,
1216 Marcus King #12A1132
Saethpert C.F.D.C.Box 3000
Pine City, N.Y. 14871-2000
8/21/14

EXHIBIT



(1st Appeal)

Prisoners' Legal Services of New York

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January 2, 2014

Albert Prack, Director of Inmate Discipline
New York State Department of Corrections
and Community Supervision
Building #2, State Campus
Albany, New York 12226

Re: Marcus King, # 12-A-1122

Dear Mr. Prack:

On October 10, 2013, Officer Tillinghast issued a misbehavior report against Marcus King, charging him with weapons possession and smuggling. Officer Tillinghast stated that while performing a strip search on Mr. King, he observed a white package containing a ceramic razor and a green leafy substance in Mr. King's rectal area. That same day, Officer Robinson wrote a second misbehavior report charging Mr. King with drug possession, and stated that the green leafy substance tested positive for marijuana.

At his Tier III disciplinary hearing, Mr. King pled not guilty to all charges and stated in his defense that the charges were made in retaliation for a previous altercation Mr. King had had with Officer Tillinghast earlier that month. Mr. King called two inmate witnesses, Inmate Bell and Inmate Chambliss to testify in support of his retaliation defense. When the hearing officer called Inmate Bell, Mr. King requested that Hearing Officer Tanea question him regarding Mr. King's previous altercation with Officer Tillinghast. Hearing Officer Tanea failed to pose any questions regarding the prior altercation to Inmate Bell. Hearing Officer Tanea denied Mr. King's request to call Inmate Chambliss, denominating Chambliss as a redundant witness who was not near the location of the incident.

Hearing Officer Tanea called Officers Tillinghast and Robinson to testify at the hearing. Although Officer Robinson's testimony can be heard on the hearing tape, Officer Tillinghast's testimony appears not to have been recorded. Mr. King later objected to Hearing Officer Tanea's refusal to allow him to question Officer Tillinghast about the prior altercation and his

possibly retaliatory submission of a false misbehavior report, questions that were relevant to his defense.

Hearing Officer Tanea found Mr. King guilty of all charges and sentenced him to twelve months in SHU. Hearing Officer Tanea stated in his written disposition that he based his determination in part on Officer Tillinghast's verbal testimony. Superintendent Wenderlich later modified Mr. King's penalty to nine months in SHU.

I request that you reverse the disposition against Mr. King because a critical portion of the hearing was not recorded,¹ and because Hearing Officer Tanea violated Mr. King's right to present witness testimony and to present a defense.

I. It is impossible to conduct a meaningful review of Mr. King's appeal, as vital portions of the hearing are absent from the hearing tape

According to Department of Corrections and Community Supervision regulations, a disciplinary hearing must be recorded in its entirety. 7 NYCRR 254.6(a)(2). The purpose of electronic recording is to permit review of disciplinary hearings by a higher authority. Matter of Berrios v. Kuhlman, 143 A.D.2d 475, 477 (3d Dep't 1988). Minor or sporadic gaps in hearing tapes that do not preclude meaningful review do not warrant reversal. Matter of Wilson v Coombe, 237 A.D.2d 831, 832 (3d Dep't 1997). However, if a hearing is not recorded in its entirety, and the disposition relies on the unrecorded portions of testimony, the hearing must be reversed. See Matter of Scott v. Coughlin, 161 Misc.2d 777 (Supreme Court, Dutchess Co. 1994) (reversing and expunging a disciplinary hearing where confidential testimony was cut off after only two minutes, and the hearing officer relied on the confidential testimony to reach his disposition).

The tape recording provided to PLS in response to our FOIL request is missing at least Officer Tillinghast's testimony and shows that Mr. King's hearing was not recorded in its entirety. Hearing Officer Tanea relied on Officer Tillinghast's testimony to reach his disposition against Mr. King. Thus, a critical evidentiary basis for Hearing Officer Tanea's determination of guilt was not preserved.

In addition, Mr. King objected that he was unable to question Officer Tillinghast regarding matters relevant to his defense, and the deficiencies in the hearing recording make it impossible to assess the validity of this objection.

¹ The hearing tape supplied to PLS, labeled 13-449, abruptly cuts off on Side A during a discussion between Hearing Officer Tanea and Mr. King regarding the availability of the log books on the day of the strip search. The tape resumes on Side B with Hearing Officer Tanea stating that when the hearing last adjourned, Mr. King requested Sergeant Belz to testify as a witness. Officer Tillinghast's testimony was not on the tape with which we were provided, but is referred to later in the recording, and mentioned in the written disposition. Based on the gap in the recording, and the absence of Officer Tillinghast's testimony, it appears that the hearing was not recorded in its entirety. On January 3, inmate records at Southport Correctional Facility could not confirm whether there was an error in the duplication of the recording tape, or if a section of the tape was actually missing. PLS is not in a position to further investigate this matter, however, if your investigation confirms that the tape recording was deficient, we ask that you reverse the hearing.

The deficiency in the tape recording is neither minor nor sporadic. Rather, the failure to record Officer Tillinghast's testimony – the officer who allegedly found the material later determined to be marijuana – was a basis of Hearing Officer Tanea's determination of guilt and is essential to a meaningful review of the hearing. In light of the failure to record this testimony, Mr. King's Tier III hearing must be reversed.

II. Mr. King was not permitted to provide relevant witness testimony to support his defense of retaliation

Inmates have a constitutional and regulatory right to call witnesses during disciplinary hearings, provided that the witness testimony is material and not redundant. See generally Wolff v. McDonnell, 418 U.S. 539 (1974); 7 NYCRR 254.5. When justified by security concerns, a hearing officer may interview a witness outside of the accused's presence, and permit the accused to submit questions for the witness and review the taped testimony. 7 NYCRR 254.5(b). When relevant, an inmate should be permitted to call witnesses in support of a retaliation defense. See, e.g., Matter of DeBoue v. Fischer, 968 N.Y.S.2d 260 (3d Dep't 2013); Matter of Lopez v. Fischer, 952 NYS2d 694 (3d Dep't 2012).

To support his retaliation defense, Mr. King asked Hearing Officer Tanea to question Inmate Bell regarding the previous altercation between Mr. King and Officer Tillinghast. Hearing Officer Tanea instead questioned Inmate Bell about the strip search incident, which Inmate Bell did not witness. Mr. King later asked Hearing Officer Tanea to question Inmate Chambliss regarding the prior incident with Officer Tillinghast. Hearing Officer Tanea refused to call Inmate Chambliss, and stated on the hearing record form that the witness was redundant, and was not present during the strip search.

Hearing Officer Tanea failed to ask Inmate Bell any of Mr. King's questions regarding the previous altercation with Officer Tillinghast. Hearing Officer Tanea questioned Inmate Bell solely about matters unrelated to the purpose for which Mr. King sought his testimony, and effectively deprived Mr. King of his right to present witnesses and fatally impaired his right to present a defense.

Furthermore, Hearing Officer Tanea erred in characterizing Inmate Chambliss's testimony as redundant. Mr. King requested Inmate Chambliss's testimony in order to present information in support of Mr. King's retaliation defense. Other than Mr. King's statement, no evidence of this nature had yet been submitted for the record. This is an especially grievous error, given Hearing Officer Tanea's failure to present Mr. King's questions regarding his retaliation defense to Inmate Bell. Hearing Officer Tanea's refusal to call Inmate Chambliss based on redundancy therefore violated Mr. King's right to call witnesses on his behalf and undermined Mr. King's presentation of his defense.

I request that you reverse the disposition against Mr. King due to Hearing Officer Tanea's failure to record a significant portion of Mr. King's hearing, including the testimony of Officer Tillinghast, upon which Hearing Officer Tanea relied to reach his disposition. Additionally, I request that you reverse the hearing based on the hearing officer's failure to allow Mr. King

either to elicit testimony from Inmate Bell relevant to his retaliation defense or to call Inmate Chambliss to support his retaliation defense.

Sincerely,



Melissa Loomis

Prisoners' Legal Services of New York

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April 2, 2014

Albert Prack, Director of Inmate Discipline
New York State Department of Corrections
and Community Supervision
Building #2, State Campus
Albany, New York 12226

COPY

Re: Marcus King, # 12-A-1122

Dear Mr. Prack:

On October 10, 2013, Officer Tillinghast issued a misbehavior report against Mr. King, charging him with weapons possession and smuggling, and Officer Robinson wrote a second misbehavior report charging Mr. King with drug possession. Hearing Officer Tanea found Mr. King guilty of all charges and sentenced him to nine months in SHU. On January 9, 2014, you ordered a rehearing to be completed within fourteen days.

Hearing Officer Lamanna began Mr. King's rehearing by stating that Sergeant Speights, the hearing escort officer, had informed him that Mr. King refused to come to the hearing, and asked the he be given the disposition when the hearing concluded. Sergeant Speights later testified that Mr. King refused to come to the hearing, and refused to sign the refusal form. Sergeant Speights never stated whether she informed Mr. King that the hearing would take place in his absence, and Hearing Officer Lamanna never questioned whether Sergeant Speights had imparted this information to him. Mr. King contends that he was not aware that the hearing had begun, and that he would have attended had he been given the opportunity.

Officer Tillinghast testified that during a strip frisk, he found a ceramic object on Mr. King's person, and that he considered the ceramic object to be a weapon. Mr. King denies that he was ever in possession of this object. The object in question is one and half inches long, only three-eighths of an inch wide, and in the shape of a trapezoid.¹ Officer Tillinghast stated that the

¹ For your reference, I have attached the photo of the ceramic object, and have attached a prototype of the object to demonstrate the object's true size.

object was wrapped in paper and tape, and he believed the paper and tape had been formed into a “holster” and “handle.”

Hearing Officer Lamanna found Mr. King guilty of all charges and sentenced him to eight months in SHU and recommended a six-month loss of good time. I request that you reverse the disposition against Mr. King, as Hearing Officer Lamanna violated Mr. King’s right to attend the hearing. I further request that you dismiss the weapons possession charge, as it is not supported by substantial evidence.

I. ~~L~~ Hearing Officer Lamanna violated Mr. King’s right to be present

Inmates possess both a federal due process right and a state regulatory right to be present at a prison disciplinary hearing. Wolff v. McDonnell, 418 U.S. 539 (1974); Title 7 NYCRR § 254.6(a)(2). There must be evidence in the record to show that an inmate’s refusal to attend is knowing, voluntary, and intelligent. Pagan v. Goord, 298 A.D.2d 735 (3d Dep’t 2002). If an inmate allegedly refuses to attend the hearing, the record must demonstrate that the inmate was informed of his right to attend the hearing and the consequences of failing to appear. Tafari v. Selsky, 836 N.Y.S.2d 206 (3d Dep’t 2007).

Sergeant Speights testified that Mr. King refused to come to the hearing, and refused to sign the refusal form, but did not testify that she informed Mr. King that the hearing would take place in his absence, and that he could be found guilty. Mr. King contends that he was not aware that the hearing had taken place, and that he would have attended had he known the hearing had commenced. Given Mr. King’s contention, Sergeant Speights and Hearing Officer Lamanna’s failure to fully inform Mr. King of his right to attend and the consequences of failing to appear was an exceptionally serious mistake.

I request that you reverse the disposition against Mr. King, as Hearing Officer Lamanna failed to ensure that Mr. King was aware that if failed to attend, the hearing would take place in his absence, and therefore violated his right to be present at the hearing.

II. The weapons possession charge is not supported by substantial evidence

The determination that a prisoner is guilty of misbehavior must be supported by substantial evidence. See Matter of Bryant v. Coughlin, 77 N.Y.2d 642 (1991). That is, the evidence must “constitute the type of relevant proof that a reasonable mind would accept as adequate to support the determination at issue.” Matter of Hemphill v Selsky, 808 N.Y.S.2d 503 (3d Dep’t 2006). To be found guilty of a weapons possession charge, an inmate must be found in possession of “an instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing bodily harm.” 7 N.Y.C.R.R. § 270.2. See also, Matter of Green v Goord, 807 N.Y.S.2d 729 (3d Dep’t 2006) (finding that an inmate could not be found guilty of a weapons charge for throwing hot water).

Officer Tillinghast testified that he found a ceramic weapon on Mr. King's person.² He failed to mention, however, that this alleged weapon was a mere inch and half long, three-eighths of an inch wide, and was in the shape of a blunt trapezoid. The "weapon" in question is no larger than a standard size paper clip, and clearly not "readily capable of causing bodily harm." The ceramic object therefore does not "constitute the type of relevant proof that reasonable mind would accept as adequate" to support a weapons possession violation.

Officer Tillinghast overreached by classifying a small ceramic object as a weapon and using this as a basis to charge Mr. King with weapons possession. The weapons charge is not supported by substantial evidence, and therefore must be dismissed.

Conclusion

I request that you reverse all charges against Mr. King, as Hearing Officer Lamanna violated his right to attend the hearing. I further request that you reverse the weapons charge against Mr. King, as this charge is not supported by substantial evidence.

Sincerely yours,

Melissa Loomis

² Mr. King contends he was never in possession of this object. I do not concede that Mr. King possessed this object; only that assuming Officer Tillinghast did find such an object, that this object could not be considered a weapon.

EXHIBIT

J

KING, MARKUS
Southport Correctional Facility

DIN: 12-A-1122
Case#: 13-It- 002593

Issue: 403-Complaints re: guard

Status: Closed
Intake: 10/23/2013
Opened: 10/23/2013
Closed: 10/23/2013

Office:	Ithaca	US Citizen
Unit:	(not specified)	SS#:
Handler:	Hutchings, Betsy	Sex: Male
Closer:	Hutchings, Betsy	DOB: 11/03/1986
		Lang: Unknown
		Ethn: African American

ISSUE:

403-Complaints re: guard
At: Southport Correctional Facility
Unit: (none specified)

NOTES:

MK writes that on 10/10/13 he was physically and sexually assaulted by guards at SP after he had been escorted from his cell for a shower. He was told to kick off his shower shoes and face the back wall of the shower, he was punched on the back, ribs, head, and side of his face, following which his face was slammed into the wall, breaking one of his teeth, ordered to remove his underwear, and told to bend forward, whereupon O Tillinghast performed a body cavity search. He was then put in an contraband watch cell for 7 days.

MK got a MR for possession of drugs and weapons concealed between MK's buttocks (that was the basis of the strip frisk, according to the report), drug use (based on urinalysis testing), and smuggling.

With respect to the use of force, bc there were no serious injuries, we sent Use of Force & Self Help materials.

We will offer assistance with the Tier III if the penalty is sufficiently serious under another case number.

STATUS INFORMATION:

Problem:	403-Complaints re: guard
Disposition:	No PLS Disposition
Major Impact:	NO
Citizenship Attest:	Not on file
Retainer agreement:	Not on file
Funding Source:	New York State
Referred by:	NOT SPECIFIED

EXHIBIT

T

Markus King 12A1122
da-8 10-20-13

RECEIVED

OCT 24 2013

57471

SOUTHPORT GRIEVANCE

(Inmate Grievance program)

On or about 10-10-13 approximately 9:30 AM On C-block 3rd Floor Eleven
Gallery where I was housed on the above date and time, I was being Escorted
Outside My cell to take a scheduled shower. Upon My arrival at the shower
I was Ordered by C.O Tallinghast, Officer Kelly and Other unknown Officers
to step inside the shower. I then Complied and as I entered the shower I
was followed by C.O Tallinghast & C.O Kelly while other unknown prison
officials; Officers and unknown Sgt was present inside shower door way, I
was ordered by C.O Tallinghast to Kick My Slippers off & walk bare foot on the
cold, Filthy shower floor to the back of the shower wall with My Face in
the corner and Not to Move. Suddenly I was Viciously and unlawfully Attacked
with Forceful blunt blows to My back, Ribs, head, side of My Face & I was
grabbed by the back of My Neck & he Rammed My Face into the back shower
wall chipping and disfiguring My Top right tooth asking Me "Didn't I tell you
I was going to come back?" "Say something Now". I was then held by C.O
Kelly who assisted C.O Tallinghast in the attack & I was Ordered to Lift My
Leg up One at a time so that My underwear can be removed by Officers
while I was still Mechanically Restrained with handcuffs to the rear.
at this time I was told to bend while being assisted by officers to a 90°
angle. I Complied out of fear for My well-being, risk of further injury
and because I was Likely to be Charged & Convicted of Disciplinary Offenses
or New Crimes. I stated repeatedly "I didn't do anything and I don't have
anything". I was then told if I Make Any Sudden Movements that I will
be Dumped & if I said another word he (C.O Tallinghast) said "I'll Lie
& say you kicked me in the balls and that'll make things really worst
for you". Officer Tallinghast begin to perform a body cavity search

OCT 24 2013

With his Fingers ; Forcefully shaking them inside My Rectal Cavity
 Which it is Consistant with his MBR document Fabricating that I was
 in Possession of a Weapon and Green Leafy Substances which he Stated on
 his Report; "While Conducting a pat Frisk of inmate King(2A1132), I Felt AN
 unusual bulge in the inmate's recta area". I Was then ordered to Lift My
 Ley up one at a time so these Officers can put my underwear back on.
 I Was then placed in a waist chain ; shackles and Escorted OFF C-11
 gallery in My underwear from the shower (see C-11 gallery recreation video).
 I was placed in a Contraband Watch room for 7 days where My Fecal Matter ;
 Bodily Fluids were searched with Negative results. I later Learned through
 C.O Tallingshast who sexually assaulted ; abused Me that I was being
 charged with a weapon ; drugs. Later by this same Officer I was asked
 to provide urine inwhich I received a MBR for Positive results of
 Marijuana inwhich my urine sample was Tampered with. At any event Im
 being charged Twice or (2) Seperate MBR's For same incident which is
 Double Jeopardy. I received a MBR For Weapons possession and another For
 a Green Leafy Substance inwhich according to C.O Tallingshast's MBR that
 "Allegedly" both items were found on my person. A Restraint Order
 prepared by Sgt Belz stated Marijuana was found in my cell which
 Contradicts C.O Tallingshast's MBR Document. Due to this Traumatic
 Event I am a Victim Of Not only Sexual assault, but a violent assault
 and sexual abuse. I have No sense of Dignity, I have been Mortified,
 Violated, humiliated, I am in Fright, shock and Im Very Embarrassed to
 Even Make This Report but I am in total Fear for My Life, Safety and well-being
 in this Facility because all above mentioned prison Officials in this Grievance
 has a reputation Of "Setting Inmates up", being unprofessional, Wreckless,
 abusive, Careless and Very Dangerous. Im requesting that I be seen by Medical
 to Document My injuries and During all and any strip Frisk procedures
 that a health Care provider be present, and that I also be Transferred

OCT 23 2013

SOUTHPORT GRIEVANCE

To another Facility For My safety. I will also like for it to be Noted
that I am Severly Subjected to reprisals, retaliation, Sexual abuse,
and Sexual harrassment For Filing this Complaint with I.G.R.C.
I am also requesting a full investigation in this Matter, also requesting to
be removed from this area because the above Named Officer is a steady in d block
I Fear that my Property,, Mail and Food will be taken away!

Respectfully Submitted,

Markew King 12A1122

da-8 - 10/20/13

cc: File

Family

Inspector General

Governors Office

P.L.S

EXHIBIT

J

SOUTHPORT

TAPE NUMBER

13-449

DIN: 12A1122 NAME: KING, MARCUS

LOCATION: OD-OA-ODB

INCIDENT DATE & TIME: 10/10/13 11:15 AM TIER 3

REVIEW DATE: 10/16/13 BY: LT DONAHUE

DELIVERY DATE & TIME: 10/17/13 08:46 AM BY: CO DILDINE

HEARING START DATE & TIME: 10/24/13 10:30 AM BY: OSP Tanea

HEARING END DATE & TIME: 11/1/13 1:00 PM BY: OSP Tanea

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y / N

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
113.10	WEAPON	CO TILLINGHAST	G
114.10	SMUGGLING		G
115.25	DRUG POSSESSION	CO ROBINSON	G

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY DAYS	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED MO DAYS	RESTITUTION \$\$\$
A000	SHU	12	11/1/13	11/1/14			11
B000	Loss Rec	12	11/1/13	11/1/14			
E000	Loss Pack	12	11/1/13	11/1/14			
F000	Loss Comm	12	11/1/13	11/1/14			
L000	Visitation	6 mon	11/1/13	5/1/13			

DIN# 12A1122 NAME: KING, MARCUS

HEARING DATE: 11/13

A. STATEMENT OF EVIDENCE RELIED UPON:

Written Reports submitted by C.O. Tillinghast and C.O. Robinson, which I found to be credible, supports the charges contained in the Report.

C.O. Tillinghast testified that he saw a bugle in your rectal area, he searched and retrieved a bundle which had green leafy material, also found a CERAMIC RAZOR type scapor. C.O. Robinson stated he tested the green leafy material and it was Marijuana. Your witness did not present any evidence to support your plea of GUILTY. Your only defense was you were set up.

B. REASONS FOR DISPOSITION: Disposition intended to send a clear message to this inmate and others confined to this facility that smuggling weapons and drugs will not be tolerated. This type of behavior threatens the safety and security of both inmates and staff. Your past Disciplinary history was considered when giving this disposition.

C. SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: 11/13

Q.2

HEARING OFFICER SIGNATURE

Restraints, 11/13
INMATE SIGNATUREDATE & TIME RECEIVED
10pm

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

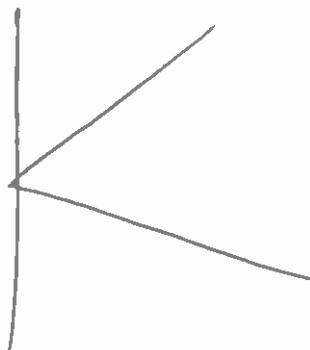
FOR TIER II HEARINGS-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

FOR TIER III HEARINGS-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

DIN: 1241122 NAME: KING, MARCUS

HEARING DATE: 7/1/13

VISITOR NAME	RELATIONSHIP	LAST VISIT	VISITS PRIOR YR			
PENALTY	PENCODE	MO DAY	START DATE	RELEASE DATE	SUSPEND	DEFERRED
ALL NO VISITS: NONCONTACT:	6000	6 00	11/1/13	5/1/13	2	
HUGHES, BTANIA C	FRIEND			07/20/2013	2	
NO VISITS: NONCONTACT:						
JACKSON, TIA A	FRIEND			07/20/2013	2	
NO VISITS: NONCONTACT:						
LARMONIE, TRACY R	FRIEND			08/19/2012	2	
NO VISITS: NONCONTACT:						
NO VISITS: NONCONTACT:						
NO VISITS: NONCONTACT:						



FORM 2176 (07/02)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)Southport Correctional FacilityKing, Marcus12A1122

Inmate Name (Print)

DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

Meinow, W 12A3129

Requested witness:

Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 10/30/13

Explanation:

SHU FACILITY INMATE NOT ABLE TO ATTEND HEARING, HEARING OFFICER WAS GIVEN QUESTIONS TO ASK BY KING, M 12A1122, HE THEN ASKED WITNESS AND PLAYED BACK TO KING THE TESTIMONY AT HEARING

Bell, A02R4363

Requested witness:

Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 10/30/13

Explanation:

SHU FACILITY INMATE NOT ABLE TO ATTEND HEARING, HEARING OFFICER WAS GIVEN QUESTIONS TO ASK BY KING, M 12A1122, HE THEN ASKED WITNESS AND PLAYED BACK TO KING THE TESTIMONY AT HEARING

C-11-20Chambliss

Requested witness:

07B3968

Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 10/31/13

Explanation:

HIS TESTIMONY IS IRRELEVANT, NOT NEAR THE LOCATION OF INCIDENT

Signature

A. R

Hearing Officer

Restraints

Inmate

12A1122

DIN

11/1/13

Date Received

TEXAS
TBBT

L

Inmate Employee Assistance

C-11 Recreational Camera 9/45 10/10 None

#1140 Form

Requesting Log Book of 9/45 or 10/10 ~~Given~~ Given already

C.O. Robinson (Witness)

C.O. Tillinghast (Witness) Hearing

Inmate Bell, D 21 cell c/11 > A-4-6 034363 R

Inmate Jose Fuentes 18 cell c/11

Pictures of Weapon? Leafy Substance ATHENAS 17

Unusual Incident Report Given previous

Copy of Contraband Receipt for cell 19 c/11

All To/Froms) Given previous
use of force) Given previous

* All Documents Generated Relating To MERS (Copies of all Restraint orders issued regarding Incident * Given previous

* Recreation Log Book of c/11 gallery of October 1st to show I've Requested Recreation and Log-in and Entry of C.O. Tillinghast To Show Rec was his Post of 10/1/B or C-block * No

* Interview of the inmates who occupied c/11 on 10/10 *

For Marcus King 12A/122
A-7-11

MNR
JT

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES
SOUTHPORT CORRECTIONAL FACILITYASSISTANT FORMTO: SET LIAISON
FROM: DISCIPLINE OFFICE1/14/14
COMPLETE NO LATER THAN
CLOSE OF BUSINESSF RECEIVED
JAN 14 2014
DISCIPLINE OFFICE
ASSISTANT RET'D

You have been selected to assist inmate:

Kino, MARCUS, DIN # 12A1112, Cell: A 111
in a pending Tier 3 Misbehavior Report dated: 1/14/14.

Pursuant to Section 251.2 of Chapter V, your role is to ensure that the inmate understands the charges, interview potential witnesses identified by the inmate and report the results of your efforts to the inmate. You may also be requested to obtain relevant documentary evidence to assist in the preparation of the inmate's defense to the charges.

To Be Completed By Assistant:I initially met with this inmate on this date: 1/14/13 at this time: 930 AM.
He requested the following named inmate(s) to be interviewed as potential witnesses:

Inmate Name	DIN	Location	Agrees to Testify
<u>Bell, D</u>	<u>03R4263</u>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

He requested the following names person(s) to be interviewed as potential witnesses:

CO Robinson
CO T. JohnsonOther Requests: None**Action Taken:****To Be Completed At Conclusion Of Assistance:**

I have interviewed witnesses and assisted as requested and reported the results to the inmate charged.

<u>DCP/KRS</u> Assistant's Signature	<u>1/14/14</u> Date	<u>120pm</u> Time
<u>Refused to sign</u> Inmate's Signature	<u>1/14/14</u> Date	<u>120pm</u> Time

DO NOT
COPY

Witnessed By (Inmate refused to sign)

Date

Time

13

Tier Assistance Selection Form

In accordance with the provisions in 7NYCRR, Part 251C of Chapter V, the inmate is entitled to select from an established list of staff designated as Assistants. The Assistant will provide the inmate assistance as outlined in Directive 4932, 251-4.2, in connection with charges of misbehavior filed against inmate:

KIRK N. T. COLS 12A 1122 on 10/10/13

Inmate MUST CHOOSE THREE (3) names from the list below, NUMBERING them in the order of his preference.

(Mark 1, 2, 3)

D. _____
J. Ayers

A. Cleary
J. Johnson
T. Richards
G. _____
E. Bartlett
M. Charmed

E. Delaney
S. Neal

T. Hourihan
K. McFall
T. Hammair
N. Sampsell
D. Liddick

M. McGrain
W. Harris
J. Looney
R. Sheldon
W. Harris
M. Wood

2 D. Chapman
D. Dundas
D. Butler
B. Curren
J. Shope
R. Abrams
E. Morales
A. Pedalty
H. Liebson
M. Speights
J. Dick

R. Portalatin (Only for documented Non-English speaking Spanish inmates)

- The inmate did receive a copy of his report.
- The inmate did receive a copy of all required drug testing forms (if applicable).
- The inmate did / did not request a copy of Chapter V. (Given on: _____) Date & Time
- No assistance is required (TIER II Misbehavior Report).
- The inmate wishes to choose an Assistant. (Ensure that THREE (3) selections are made.)
- The inmate waives his right to an Assistant.
- The inmate requests a Spanish Assistant and / or Interpreter since he is Monolingual.

**DO NOT
COPY**

Inmate's Signature: *Kirky* Date: 10/10/13

14

Officer's Signature: *J. Colm* Date: _____

HABIT

FORM 2186-SPT - RENEWAL (2/02)

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
SOUTHPORT CORRECTIONAL FACILITY

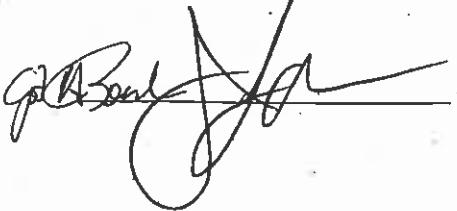
REF: 7 NYCRR 305.4

RESTRAINT ORDER - RENEWAL

I recommend that inmate	<u>King</u>	DIN	<u>12A 1122</u>	Cell location	<u>D-A-8</u>
be placed on a restraint order from <u>10/28/13</u> to <u>11/3/13</u> because of the following reasons:					
R	<u>MBR 10/10/13 113.10, 114.10, 113.25</u>				
E	<u>Weapon on person , Marijuana in cell</u>				
C					
O					
M					
M					
E	And to hinder this inmate from perpetrating further acts of violence against staff and to minimize the inmates ability to cause				
N	any injury to staff, other inmates, or to himself.				
D	I recommend <input checked="" type="checkbox"/>	Do not recommend <input type="checkbox"/>	that this inmate be required to remain in restraints in accordance		
A	with 7 NYCRR 305.4 (e)(5).				
T					
I					
O	Types of restraints and manner of application will be: <u>Handcuffs-Behind Back</u> , <u>Waist Chain</u> , and <u>Leg Restraints</u> .				
N					
 <u>W. Morris</u>		Sergeant	<u>10/26/13</u> Date		

Renewal Authorization

NOTICE TO INMATE: You may write to the Deputy Superintendent for Security or his/her designee to make a statement as to the need for continuing this restraint order.

	Dep. Supt for Security	<u>10/28/13</u>	Date
---	------------------------	-----------------	------

FORM 1140 (3/00)
Ref: Dir #4910

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
REPORT OF STRIP SEARCH OR STRIP FRISK

DATE: 10-10-13
TIME 11:15

INMATE NAME:	KING, M	DIN#:	12A1122	FRISK LOCATION:	CiL Shower #3
BASIS OF SEARCH/FRISK: GIVE REASONS <u>DURING PAT FRISK FELT UNUSUAL BUGLE IN RECTAL AREA</u>					
<input checked="" type="checkbox"/> PROBABLE CAUSE OTHER					
TYPE OF SEARCH					
<input type="checkbox"/> STRIP SEARCH <input checked="" type="checkbox"/> STRIP FRISK					
AUTHORIZED BY	Sgt BELZ	SIGNATURE	<u>Sgt. A. Belz</u>		
NAME/RANK OF PERSON(S) CONDUCTING FRISK: 1) Co L. Tillinghast 2)					
- If Other Staff are Present, List Name/Rank, and Explain Why Their Presence was Necessary and Who Authorized Their Presence: _____ _____					
RESULTS OF SEARCH	<u>GREEN LEAFY MATERIAL & CERAMIC RAZER TYPE WEAPON</u>				
WAS FORCE REQUIRED TO COMPLETE THE SEARCH?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		SIGNATURE <u>J. H.</u>		
Orig. IRC (Inmate File)	cc: Captain (Retain 1 Yr.)	cc: DSS			

FORM #2077 (Rev. 8/01)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
CONTRABAND RECEIPT

DATE/TIME 10/10/13 @ 11:15 AM
LOCATION C-11-19 AM

SOUTHPORT CORRECTIONAL FACILITY

Original - Inmate
Copy - D.S.S

INMATE NAME: KING DIN 12A1122
 NO CONTRABAND FOUND NO PROPERTY DAMAGED DURING SEARCH

OFFICER CONDUCTING SEARCH

SIGNATURE R. Thwaite
PRINT NAME R. Thwaite

ITEMS CONFISCATED OR DAMAGED	WHERE FOUND	COMMENTS
<u>NCF</u>		<u>NDD</u>
		<u>DO NOT COPY</u>

DISPOSITION OF ITEMS LISTED

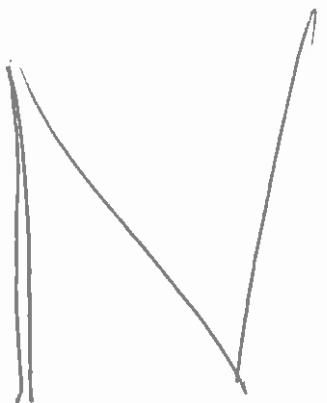
PERSON RECEIVING ITEMS
SIGNATURE COPY

9

YOU MAY WRITE TO THE DEPUTY SUPERINTENDENT FOR SECURITY WITHIN 7 DAYS
THIS RECEIPT REGARDING THE CONFISCATION OR DISPOSITION OF THESE ITEMS.

PRINT NAME

EXHIBIT



Tour II 7x3 10/10/13

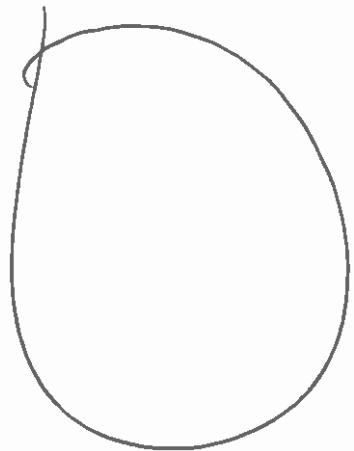
Tape #
14-023

275

942

11-19 King 12A 1922 moved
to D-Block 11-21 moved to D-C-25 11-19 - D M-33
escort Sgt Beltr, CO Tillinghast, Minn., Sandusky
Thrall, Trebelini

Exhibit



DATE: January 15, 2014

TO: ~~L.T. DONAHUE~~

FROM: S. J. Wenderlich, Superintendent

RE: DESIGNATION TO CONDUCT TIER III HEARING PROCEEDING IN THE CASE OF:

KING, MARCUS - 12-A-1122

Inmate's Name and DIN Number

Pursuant to Title 7, Chapter V, Section 254.1, the Superintendent may, if sufficient reason exist, designate personnel to conduct Tier III Proceedings on his behalf.

To date the following personnel have been so designated:

Deputy Superintendents (or their reliefs)

Captains (or their reliefs)

Civilian Hearing Officer from Central Office

In addition to the above designation, I am hereby designating other facility personnel to conduct such proceedings when the volume of pending cases is such to warrant assistance; namely Correction Lieutenants and Institution Stewards. Their designation however, will be restricted to specifically assigned cases.

In accordance with the above statements, and to ensure a timely completion of the Tier III Proceedings in the case of **KING, MARCUS - 12-A-1122** you are hereby designated to conduct said hearing.

S. Wenderlich

Superintendent or Designee

1-15-14

Date

On 1/24/14 a Tier III hearing was held on the above named inmate by the above named hearing officer:

The following was the disposition:

8 months S.H.U

8 Loss of Priv

8 Loss of comm

8 Loss of phone

3 months loss of all visits

6 months re-loss of good time

**DO NOT
COPY**

Hearing Reviewed By:

S. Wenderlich
Superintendent or Designee

Date: 1-28-14

19

SOUTHPORT CORRECTIONAL FACILITY

DISCIPLINE OFFICE

MEMORANDUM

TO: Hearing Officer 155 (H) 114

FROM: Discipline Office

RE: Inmate Name: Kirk A

DIN No: 12A 1132 Cell: A-7-11

Incident Date: 1/10/13 Time: 11:15

DATE: 1-24-14

Inmate: Please sign below to acknowledge receipt of the following documents pertaining to the above incident:

Unusual Incident
 Use of Force
 To/Froms
 Log Book Entries
 Hearing Disposition
 Witness Interview Form(s) #2176
 Hearing Extension
 Appeal Form #2178A
 Other - Specified Document _____

R. H. to sign

Inmate's Signature

12A 1132

DIN No.

1-24-14

Date

11:15

Time

R. Angst

Serving Officer's Signature

**DO NOT
COPY**

HEARING OFFICER: TO BE PLACED IN HEARING PACKET

15

Exhibit

A handwritten signature in black ink that reads "Exhibit". The signature is fluid and cursive, with a prominent "E" at the beginning. Below the signature is a large, roughly drawn oval shape, also in black ink.

DEPARTMENT OF CORRECTIONAL AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNucci
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: KING, MARCUS

NO. 12A1122

HEARING FACILITY: SOUTHPORT

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF NOVEMBER 1, 2013, HAS BEEN REVIEWED AND REVERSED ON JANUARY 9, 2014. COMMENCE AND COMPLETE REHEARING WITHIN 14 DAYS OF RECEIPT OF THIS NOTICE.

ALBERT PRACK

DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES
M. LOOMIS, ITHACA PLS

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL HOUSING/INMATE DISCIPLINE PROGRAM.

DO NOT
COPY

M

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
 THE HARRIMAN STATE CAMPUS - BUILDING 2
 1220 WASHINGTON AVENUE
 ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
 ACTING COMMISSIONER

JOSEPH BELLINTER
 DEPUTY COMMISSIONER
 CORRECTIONAL FACILITIES

MEMORANDUM

TO: SUPERINTENDENT STEPHEN J WENDERLICH
 SOUTHPORT CORRECTIONAL FACILITY

FROM: ALBERT PRACK, DIRECTOR
 SPECIAL HOUSING/INMATE DISCIPLINE

DATE: JANUARY 9, 2014

RE: REVERSAL OF SUPERINTENDENT'S HEARING

<u>INMATE/NUMBER</u>	<u>DATE OF HEARING</u>	<u>DATE OF INCIDENT</u>
KING, MARCUS #12A1122	NOVEMBER 1, 2013 BY TANEA @ SOUTHPOR C.F.	OCTOBER 10, 2013

THE ABOVE-NOTED SUPERINTENDENT'S HEARING HAS BEEN REVERSED AND A REHEARING ORDERED ON JANUARY 9, 2014, FOR THE FOLLOWING REASON(S):

FAILURE TO MAINTAIN A COMPLETE ELECTRONIC RECORD (CO TILLINGHAST TESTIMONY). COMMENCE AND COMPLETE REHEARING WITHIN 14 DAYS OF RECEIPT OF THIS NOTICE.

PLEASE DO NOT HESITATE TO SHARE THIS INFORMATION WITH THE HEARING OFFICER WHO CONDUCTED THE HEARING OR ANY OTHER APPROPRIATE STAFF MEMBER.

DO NOT
 COPY

18



A handwritten signature in black ink, appearing to read "Michael J. Niblack". The signature is fluid and cursive, with a large, stylized 'M' at the beginning. Below the main name, there is a smaller, more abstract scribble or a second signature attempt.

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)Correctional FacilityKing Marcus

Inmate Name (Print)

12A 1122

DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

P.O. Johnson

Requested witness:

Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 1/24/14

Explanation:

Officer Johnson testified outside inmate's presence because inmate refused to attend hearing - witness of report

P.O. Johnson

Requested witness:

Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 1/23/14

Explanation:

Officer Johnson testified outside inmate's presence because inmate refused to attend hearing - witness of report

Sgt. Spraggins

Requested witness:

Permission to call the requested witness is denied.
 Requested witness will testify outside inmate's presence.
 Inmate is not permitted to review requested witness's testimony.

Date: 1/23/14

Explanation:

Testified Alt inmate refused to attend the hearing - witness of report

Signature

J. M. De

Hearing Officer

Inmate

DIN

Date Received

Distribution: Original - Hearing Record Copy - Inmate

DO NOT
COPY

16

Exhibit

P

REVIEW OFFICER LT GANTERY

REVIEW DATE 01/10/14 TIER 3

C.R. DATE 03/02/2022 M.E. DATE 04/24/2024

1) NAME KING, MARCUS DIN 12A1122 LOCATION OA-07-011
 2) INCIDENT DATE 10/10/13 INCIDENT TIME 11:15 AM
 3) INMATE WAS NOT CONFINED
 4) INMATE RELEASED AT REVIEW
 5A) SERVING OFFICER B. Coda SERVING DATE/TIME 1/10/14 :2 15pm
 5B) RELEASED FROM PREHEARING CONFINEMENT? NIA
 AUTHORIZED PERSON NIA DATE AUTHORIZED NSP
 6) ASSISTANT NAME Sgt Chapman
 7) INTERVIEW DATE 1/14/14 INTERVIEW TIME 9:30 AM
 8) EXTENSION NUMBER 14210429 (IF APPLICABLE)
 9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO INMATE
 PURSUANT TO DIRECTIVE 493 OR 493B
 TEST REQUEST FORMS TEST PROCEDURE FORMS
 TEST RESULT FORMS APPENDIX C OTHER (SPECIFY) _____
 10) INMATE IS ENGLISH SPEAKING
 A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO INMATE? NIA
 B) INTERPRETOR AT HEARING NIA
 11) HEARING BEGIN:DATE 1/23/14 TIME 12:00PM END:DATE 1/24/14 TIME 3:00PM.
 12) CHARGES: SPECIFY INMATE'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING
 CHARGE INMATE'S

NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	PLEA
113.25	DRUG POSSESSION	CO J. ROBINSON	<u>N.G</u>
113.10	WEAPON	CO L. TILLINGHAST	<u>N.G</u>
114.10	SMUGGLING	CO L. TILLINGHAST	<u>N.G</u>

SIGNATURE OF INMATE

*Refused to attend hearing*DATE 1/23/14TIME 12:00PM

13) WITNESSES: IF NONE REQUESTED, CHECK HERE

A) REQUESTED BY INMATE

Bell 03R4863

TESTIFIED

IN INMATE'S PRESENCE

Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	<i>refused</i>	Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input checked="" type="checkbox"/>
Y <input type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>

N.GN.GN.G

B) REQUESTED BY HEARING OFFICER

Sgt Spriggs.

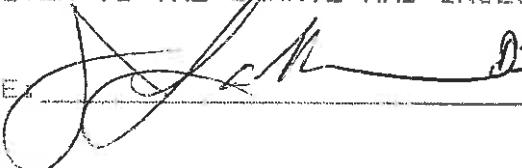
TESTIFIED

IN INMATE'S PRESENCE

Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	<i>via phone</i>	Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>
Y <input type="checkbox"/>	N <input type="checkbox"/>		Y <input type="checkbox"/>	N <input type="checkbox"/>

VIA PHONE2176

NOTE IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE PRESENCE OF THE INMATE CHARGED, AND/OR THE INMATE IS NOT PERMITTED TO REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT DETERMINATION MUST BE GIVEN TO THE INMATE AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE *DSS***DO NOT
COPY***J*

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
SOUTHPORT CORRECTIONAL FACILITY
SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN: 12A1122

NAME: KING, MARCUS

HEARING DATE: 1/24/13

A. STATEMENT OF EVIDENCE RELIED UPON:

The written report and testimony of Officers Tillinghast and Robinson. Upon being pat frisked, Officer Tillinghast felt a bulge in your rectal area. A strip frisk was then authorized and conducted by Officer Tillinghast. During the frisk the Officer did observe that you had a white package between your buttocks. Officer Tillinghast ordered you to hand the package to him and you complied. In the package was green leafy substance that Officer Robinson tested and found it to be positive for marijuana .2 grams.. Also in the package was a razor type weapon (ceramic) wrapped in paper and tape that was constructed as a holster and handle. That weapon measured 1.5" long x 3/8" wide. UI # 13-0056 was reviewed and considered during this hearing. You stated to Sergeant Speights that you were not going to attend the hearing and gave no reason why. You did state to just deliver the disposition when complete. I did go to your cell and you still refused to testify and come out for this hearing.

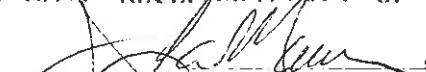
B. REASON FOR DISPOSITION:

To deter you and all others from this behavior. Possessing any contraband and attempting to smuggle that contraband is a serious offense. In this case you possessed marijuana and a ceramic weapon. In your short time incarcerated you have had 6 serious T-3 misbehavior reports 3 drug charges, 2 weapons charges and one gang charge. Other dispositions have not produced the desired effect to change your behavior therefore a more significant sanction will be imposed as a result. If this type of behavior continues, or similar serious misbehaviors like this one continue a more severe penalty can be imposed. This Hearing Officer has the obligation to protect all staff and inmates from your violent behavior therefore significant SHU time is warranted

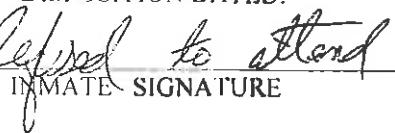
C. SPECIAL INSTRUCTION ON VISITATION OR CORRESPONDENCE RESTRICTIONS, REFERRALS OR SPECIAL EVENT LOSS:

3 months loss of all visits from all visitors.

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED:


HEARING OFFICER SIGNATURE

DS


INMATE SIGNATURE


January 24, 2014

DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

FOR TIER II HEARING-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

DO NOT
COPY

FOR TIER III HEARING-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

3

SOUTHPORT

TAPE NUMBER 14-023

DIN: 12A1122 NAME: KING, MARCUS

LOCATION: OA-07-011

INCIDENT DATE & TIME: 10/10/13 11:15 AM TIER 3

REVIEW DATE: 01/10/14 BY: LT GANTERT

DELIVERY DATE & TIME: 01/10/14 02:15 PM BY: CO COON

HEARING START DATE & TIME: 1/123/2014 12:00 PM BY: OSS LAMANNA

HEARING END DATE & TIME: 1/123/2014 12:50 PM BY: OSS LAMANNA

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y / N

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
113.10	WEAPON	CO L. TILLINGHAST	G
114.10	SMUGGLING		G
113.25	DRUG POSSESSION	CO J ROBINSON	G

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE (\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MD DAYS	START DATE	RELEASE DATE	SUSPEND MD DAYS	DEFERRED MD DAYS	RESTITUTION \$\$\$
H000	SHV	8	2/17/14	10/17/14			77
D000	Loss of All	8					
R000	Loss of Pro	8	3/15/14	11/15/14			
P100	Loss of Com	8	3/15/14	11/15/14			
G100	Loss of Priv	8	3/15/14	11/15/14			
L100	Loss of All Visits 3 months						
H100	Per-Loss of Good Time 6 months						

DO NOT
COPY

Exhibit C

NEW YORK STATE
DEPARTMENT OF CORRECTIONAL SERVICES
Saratoga CORRECTIONAL FACILITY

REQUESTED INMATE WITNESS REFUSAL TO TESTIFY
IN TIER II/TIER III DISCIPLINARY HEARING

I, KING, M, hereby refuse to testify
NAME DIN
on behalf of KING, M, in his/her Tier II/Tier III
NAME DIN
hearing for a misbehavior report of _____ for the following
DATE
reason(s). Circle number that applies and give specific reason for refusing to testify.

1. I do not want to be involved (explain) _____

2. I do not know enough about specific incident to provide relevant
testimony (explain) _____

3. Other (specify reason) _____

Refused to Sign
SIGNATURE

1/23/14
DATE

EMPLOYEE SIGNATURE

DATE

I specifically asked King, M 12A112Z to provide a reason for his/her refusal to
testify and he/she refused to provide further information.

M. Speights, SGT
EMPLOYEE SIGNATURE

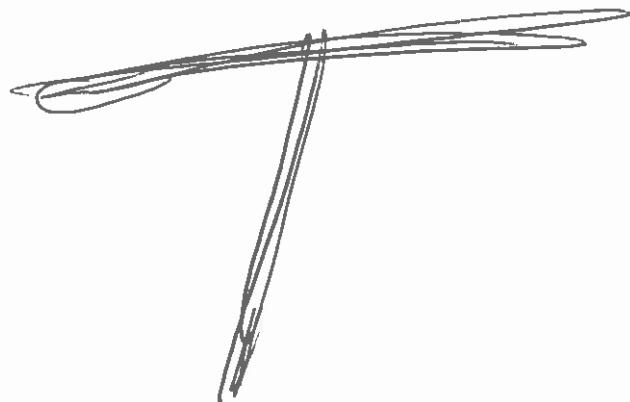
1/23/14
DATE

DO NOT
COPY

E. Taylor

6

E X H I B I T



FORM 3105A (7/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	DIN	Date of Birth	Facility Name
King, Marcus	12A1122	11-3-86	southport
Subjective:	AMSC Requesting to see the doctor.		
Objective:	C10 HA and back pain x2 weeks and motion not normal.		
Assessment:	WORKING: ATO x 3, gait stable. Adls normal.		
Plan:	TO MD/PA for review		
Last Name		KING	
DIN		12A1122	
Date		10/27/13	
Time		AMSC	
Provider Orders:			
VBP cont Motrin SL			
Signature/Provider # <u>J. Delker</u> RN Transcribing Order/Provider #/Date/Time _____			
Subjective:	<u>Block Call Out</u>		
<u>Wsf:</u> <u>10</u>	Last Name <u>KING</u>		
<u>BP 146/88</u>	DIN <u>12A1122</u> Location <u>DA 8</u>		
Objective:	Allegories called to shower - beaten by 3 co's - "bend over 90° angle" - "chipped tooth"		
Assessment:			
Plan:	P 72 <u>WKG08</u>		
Signature/Provider # <u>WKG08</u> RN Transcribing Order/Provider #/Date/Time _____			
Subjective:	- Co's put finger in - neck pain - "fork undescended off II		
Objective:			
Assessment:	Exam: no indicator of recent or old trauma		
Plan:	No need for outside ED visit. <u>WKG08</u> MTR if issued <u>①</u>		
Signature/Provider # <u>WKG08</u> RN Transcribing Order/Provider #/Date/Time _____			

Continue entry into next box if necessary.

E X H I B I T

U

FORM 3105A (7/11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name	DIN	Date of Birth	Facility Name
<i>King Michael</i>	<i>12A1122</i>	<i>11/3/86</i>	<i>63C</i>
Subjective:	Last Name _____ DIN _____ Location _____ Date <u>11/13/13</u> Time <u>AM</u>		
Objective:	Provider Orders:		
Assessment:	<i>Gum</i>		
Plan:	<i>dental appt</i>		
Signature/Provider #	RN Transcribing Order/Provider #/Date/Time		
Subjective: Old Basal. Pain & sensitivity - left upper teeth - sharp sensitivity to cold sometimes associated with movement -	Last Name <i>KING, MICHAEL</i> DIN <i>12A1122</i> Location <i>DAS</i> Date <i>11/13/13</i> Time <i>AM</i>		
Objective: Movement -	Provider Orders:		
Assessment: Left upper teeth sensitive to cold	<i>DENTAL CPT#</i>		
Plan: inmate would like X-ray on October incident 11/29/13. Seen by MD	<i>X-ray - LS sponge</i>		
W/ MD then dental ODC (incisor to D)	<i>WXL108</i> 11-22-13		
Signature/Provider # <i>SHANE SHAW</i> RN Transcribing Order/Provider #/Date/Time			
Subjective: G/O skin problem on feet.	Last Name <i>KING</i> DIN <i>12A1122</i> Location <i>D-8</i> Date <i>12/5/13</i> Time <i>AM</i>		
Objective: Requesting Dental Care.	Provider Orders:		
Assessment: N/A	<i>AFC #3</i>		
Plan: Given AFC for feet			
	Dental protocol followed for dental care.		
Signature/Provider # <i>SHANE SHAW</i> RN Transcribing Order/Provider #/Date/Time			

Continue entry into next box if necessary.

FORM 3105A (7-11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name <u>King</u>	DIN <u>12A 6122</u>	Date of Birth <u>11/3/84</u>	Facility Name <u>680</u>
Subjective: <u>See 3/17/14.</u> <u>- Lk pain forearm to hand, R side.</u>	Last Name _____	DIN _____	Location <u>A 83</u>
Objective: <u>Wands, R side.</u>	Date <u>5/6/14</u>	Time _____	Provider Orders:
Assessment: <u>• R hand Dom, 9/10 weakness, but no motion of AOL deficit</u> <u>• States he did use glyxaril, see refills appears to have been compliant, little relief</u> <u>• HT R middle finger recession. States R</u>			
Plan: <u>M. DL - 253</u>	RN Transcribing Order/Provider #/Date/Time _____		
Signature/Provider # _____			
Subjective: <u>hand dominant.</u>	Last Name <u>continued</u>		
Objective: <u>States OTC motion & helpful but would</u> <u>be willing to try other NSAIDs.</u>	DIN <u>12A 6122</u>	Location _____	Date <u>5/6/14</u>
Assessment: <u>Please advise</u>	Provider Orders: <u>Call a/c + SPN</u>		
Plan: <u>M. DL - 253</u>	RN Transcribing Order/Provider #/Date/Time _____		
Signature/Provider # _____			
Subjective: <u>OC Headaches - and Back pain</u> <u>occurred moderate to</u> <u>moderate</u>	Last Name <u>King</u>		
Objective: <u></u>	DIN <u>12A 1182</u>	Location <u>B93</u>	Date <u>05/19/14</u>
Assessment: <u></u>	Time <u>0900</u>		
Plan: <u>1) OC headache MD collect</u> <u>follow up SICK CALL</u>	Provider Orders: <u>1) metoclopramide 100 mg po bid</u> <u>2) flax oil 1 TSP #1000 instuction</u>		
Signature/Provider # <u>Shane B. LNT #90</u>	RN Transcribing Order/Provider #/Date/Time _____		

Continue entry into next box if necessary.

FORM 3105A (7-11)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
AMBULATORY HEALTH RECORD PROGRESS NOTE

Name <i>Kings, Marcellus</i>	DIN <i>1Q4HQQ</i>	Date of Birth <i>11/3/82</i>	Facility Name <i>SF</i>
Subjective: <i>C/o HA n pt side of head.</i>	Last Name <i>KINGS, MARCELLUS</i> DIN <i>1Q4HQQ</i> Location <i>B93</i> Date <i>5-25-14</i> Time <i>A</i>		
Objective: ? sinus/allergies	Provider Orders:		
Assessment: no visual signs of distress	<i>CTM -</i>		
Plan: <i>det neg. to go out. to recheck monk 25</i>			
Signature/Provider # <i>MW</i>	RN Transcribing Order/Provider #/Date/Time _____		
Subjective:	Last Name _____		
Objective:	DIN _____ Location _____ Date _____ Time _____		
Assessment:	Provider Orders:		
Plan:			
Signature/Provider # _____	RN Transcribing Order/Provider #/Date/Time _____		
Subjective:	Last Name _____		
Objective: .	DIN _____ Location _____ Date _____ Time _____		
Assessment:	Provider Orders:		
Plan:			
Signature/Provider # _____	RN Transcribing Order/Provider #/Date/Time _____		

Continue entry into next box if necessary.

E X H I B I T

V

ArnotHealth
Radiology Services

12/18/13

Arnot Ogden Medical Center
600 Roe Avenue
Elmira, NY 14905

St. Josephs Hospital
555 St Joseph's boulevard
Elmira, NY 14904

Ira Davenport Memorial Hospital
7571 State Route 54
Bath, NY 14810

Troy Radiology Services
45 Mud Creek Road
Troy, PA 16947

12/11/13

DB-19

Printed - 12/12/2013 6:59:44AM

REPORT OF RADIOLOGY SERVICE

Page 1

Patient: KING, MARCUS
MRN: 563480
DOB: 11/03/1986

Location: PREO
Ordering MD: Canfield, Wesley

<u>Exam Date</u>	<u>Accession #</u>	<u>Procedure/Reason For Study</u>
12/11/2013	10437855	Lumbar Spine / pain

***** Final Report *****

Study: AP and lateral views of the lumbar spine 1045 hours 12/11/2013 comparison studies none.

HISTORY: Pain.

FINDINGS: No fracture, subluxation, or significant disc space narrowing.

Signing Radiologist: Taylor MD, Thomas (ARFL) 12/11/2013 2:07PM Dictated on: 2013/12/11 14:07:02.13

Referring MD: Canfield, Wesley
Attending MD: Canfield, Wesley
Admitting MD: Canfield, Wesley

REVIEWED BY (Init.) BW / 12/18/13 DATE

- NO ACTION IS REQUIRED AT THIS TIME
- REPORT TO SICK CALL
- FOLLOW UP WILL BE ARRANGED WITH A PRIMARY PROVIDER
- FOLLOW UP WILL BE ARRANGED WITH A SPECIALIST
- NOTIFICATION FORM COMPLETED AND DISTRIBUTED

SP033 (02/03)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
SOUTHPORT CORRECTIONAL FACILITY
HEALTH SERVICES
SICK CALL RESPONSE

TO:

KING

Name

12A/1172

DIN

D-13

Location

FROM: Southport Health Services, Nurse:

M

DATE:

12/11/13

RE: Response to your sick call request (and/or)
Notification of Laboratory/X-ray test results

Your request for dental services has been forwarded to the Dental Department

You have been scheduled to see the Nurse Practitioner or Medical Doctor in the near future.

You have been scheduled to see the Optometrist per HSPM 1.3 Vision Care.

You have been scheduled for lab services as indicated.

You have been scheduled for an x-ray as indicated.

Your laboratory / X-ray (circle one) results have been reviewed by the Nurse Practitioner and/or the Medical Doctor. The results were essentially normal. If you have any questions or concerns about this test or your health, you should request to be seen at sick-call. 12/11/13

Comments:

Routing:

Original: Inmate

Copy: Medical Record

A handwritten signature is at the top, appearing to read "John Smith". Below it is a large, stylized letter 'A'.

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: KING, MARCUS

NO. 12A1122

HEARING FACILITY: SOUTHPOR

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF JANUARY 23, 2014, HAS BEEN REVIEWED AND AFFIRMED ON APRIL 8, 2014.

Ithaca Regional Office
Inmates' Legal Services of NY

APR 11 2014

ALBERT PRACK
DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES
M. LOOMIS, PLS ITHACA

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL HOUSING/INMATE DISCIPLINE PROGRAM.

Eminem

J

NO. 4910, Control of & Search for Contraband

DATE 12/13/2011

PAGE 7 of 24

H. "Body Cavity Search": (See Division of Health Services Policy Manual, Item Number 1.37, "Body Cavity Searches," Attachment E)

1. Definition: A body cavity search means a physical examination of an inmate's anal and/or genital cavities by a Physician.
2. Authorization:
 - a. Single inmate: A body cavity search may not be performed except upon the explicit authorization of the Superintendent, Acting Superintendent, or Facility Officer of the Day.
The Superintendent, Acting Superintendent, or Facility Officer of the Day shall not authorize a body cavity search without having first been advised of all circumstances and will base the decision upon evaluation of those circumstances, with particular consideration of the intrusiveness of a body cavity search after consultation with a Central Office Physician. A body cavity search shall be conducted by a Facility Physician under Central Office Physician guidance.
 - b. More than one inmate: In instances when a body cavity search is requested or suggested for more than one inmate in a single incident, the Superintendent, Acting Superintendent, or the Facility Officer of the Day must gain authorization from the Deputy Commissioner for Correctional Facilities or, during non-business hours, the Departmental Officer of the Day.
The Deputy Commissioner for Correctional Facilities or the Departmental Officer of the Day shall not authorize a body cavity search without having first been advised of all circumstances and will base the decision on evaluation of those circumstances, with particular consideration of:
 - (1) The intrusiveness of a body cavity search,
 - (2) The number of inmates to be searched,
 - (3) The imminence and seriousness of the danger of the contraband,
 - (4) The likelihood that the contraband was secreted in the body cavities and has not been disposed of, and
 - (5) The possible use of less intrusive searches, to either discover the contraband or a narrowing of the group to be searched.
3. Application: A body cavity search may be authorized only in circumstances where there are compelling reasons to believe that the inmate or inmates to be searched have secreted contraband in a rectal/vaginal cavity, the nature of which constitutes a clear threat to the safety and security of the facility and/or a threat to the safety and well-being of any person. Compelling reasons are limited to:
 - a. A foreign object's presence is indicated by a metal detector but is not visible during a strip frisk;
 - b. A foreign object is observed to be present during a strip frisk;
 - c. Intelligence information possessed by facility administration and/or staff indicates the probability of the presence of contraband in the body cavities of the inmate or inmates to be searched; or
 - d. Probable presence of contraband in the body cavities of the inmate or inmates to be searched is indicated by other observations such as unusual gait, indications of discomfort, particularly while walking or sitting, unusual posture, etc.

NO. 4910, Control of & Search for Contraband

DATE 12/13/2011

PAGE 8 of 24

4. Procedure

- a. This search shall be conducted in accordance with professional standards and in compliance with the Health Services protocol (see Attachment E) regarding body cavity searches which provides, in pertinent part: This procedure shall be conducted by a Facility Physician under Central Office Physician guidance. The examination must be accomplished in an appropriate examining room using acceptable aseptic techniques for such an exam, i.e., draping, positioning, explanation of the procedure to be performed. One Correction Officer of the same sex as the inmate must be present as a witness.
- b. Prior to conducting a body cavity search, the Physician must explain the process to the inmate and the inmate must be given the opportunity to yield the contraband voluntarily. If the search is for a specific item which is voluntarily yielded, the search shall not continue. Force should not be used to complete a body cavity search.
- c. Every precaution shall be taken to ensure as much privacy as is possible under the circumstances.
- d. On all occasions that a body cavity search is conducted, the incident must be reported, through the unusual incident process under incident type #22, by specifying body cavity search, to the Department's Communication Control Center with the follow-up submission of the required Unusual Incident Report (see Directive #4004, "Unusual Incident Report").

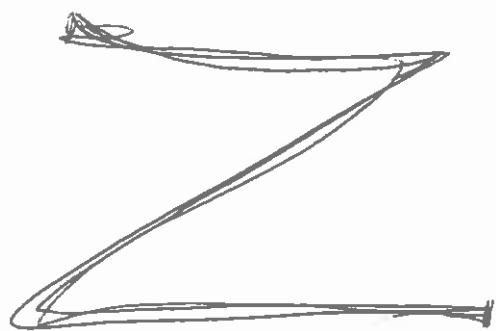
I. "Radiological Detection Search"

- 1. Definition: A radiological detection search means an internal search of the inmate's person via the use of equipment such as X-rays.
- 2. Authorization: A radiological detection search will be performed only with the express authorization of the Superintendent, Acting Superintendent, or Facility Officer of the Day, and only after consultation with the facility's Health Services Director or his or her designee to ensure that such a search will not be injurious to the inmate's health.
The Superintendent, Acting Superintendent, or Facility Officer of the Day shall not authorize a radiological detection search without having first been advised of all circumstances and will base the decision upon evaluation of those circumstances, with particular consideration given to the sensitivity of a radiological detection search.
- 3. Application: A radiological detection search may be authorized only in circumstances where there are compelling reasons to believe that the inmate or inmates to be searched have secreted in their bodies contraband, the nature of which constitutes a clear threat to the safety and security of the facility and/or a threat to the safety and well-being of any person.

J. "Native American Medicine Bag Search"

- 1. A Native American shall hold his or her medicine bag open for visual inspection by the Correction Officer. If the inmate is not present or if special security concerns exist (e.g. the Native American inmate refuses to open the medicine bag or threatens, assaults or attempts to assault staff or other inmates; or the inmate or the medicine bag pose a threat to the safety and security of the facility), then the medicine bag may be held open by the Chaplain. If the Chaplain is not available, the bag shall be secured by the Correction Officer in an area designated by the Deputy Superintendent for Security until the Chaplain is present. If exigent circumstances exist, however, the Superintendent may authorize the search of a bag without a Chaplain, provided a Lieutenant or higher ranking Officer is present when the bag is opened for visual inspection.
- 2. A medicine bag may be scanned at any time with a metal or other electronic detector.
- 3. The contents of a medicine bag may be tested for illegal substances if contraband is suspected, pursuant to the provisions of Directive #4938, "Contraband Drug Testing."

~~EXHIBIT~~



STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
DENTAL TREATMENT RECORDName: KING, MARCUSDIN: 12A1122

DATE (MO/DA/YR)	TOOTH NUMBER	ADA Class	DIAGNOSTIC - TREATMENT - REMARKS	DENTIST SIGNATURE
APR 25 2012			RECORD REVIEW-ATTICA C.F.	J. R. CORTESE, DDS
JUL 24 2012			TRANSFERRED FROM ATTICA C.F.	
7/30/12			ARRIVED AT SOUTHPORT RT	LISA HAYTH, R.D.H.
7/30/12			II Record Review	R.J. HAAG, DMD
2/19/13			TRANSFERRED FROM SOUTHPORT	LISA HAYTH, R.D.H.
2/26/13			ARRIVED GREAT MEADOW C.F.	S. JAMES DENTAL ASSISTANT
2/28/13			CHART REVIEW	HARI M. IYER, DDS
4/9/13			ARRIVED AT SOUTHPORT	LISA HAYTH, R.D.H.
4/9/13			II Records Review	R.J. HAAG, DMD
7-1-B			Health History Update Caudle Scale / Pulse Signs Sub present all lower teeth - OHT	
11/20/13	PW	F	Quar na@parting	LISA HAYTH, R.D.H.
9			I Exam, Periodontal Xylo C 1:100 X 1 caps	
2			O + Autotach Flawless A2 ↓↓↓↓↓	
12/30/13			II Exam, Periodontal 2 BX X 2 caps	R.J. HAAG, DMD
			I Impression filling list	R.J. HAAG, DMD
1/2/14			Health History Update Caudle Scale / Pulse Signs present OHT Quar	
6/23/14	PW	F	Na@parting	LISA HAYTH, R.D.H.
18			I Exam, Xylo C 1:100 X 2 caps OTR	
18			O - dy cold sense	
19			O - dy cold sense	R.J. HAAG, DMD
7/3/14			Health History Update Caudle Scale / Pulse Slight Sign - OTR Quar	
pw			II Na@parting	LISA HAYTH, R.D.H.

United States District Court
Western District of New York

Markus King #12A1122

Plaintiff,

Against

Stephen Wenderich, et al;
Defendants.

-CV-
Certificate
of
Service

I, Markus King, do hereby affirm under the penalties of perjury pursuant to 28 U.S.C. § 1746 the following to be true and accurate:

[1.] I mailed by placing in U.S. postal mail box: (i). Affirmed Verified Complaint, (ii). appendix with attached Exhibits, (iii). Memorandum of Law, and (iv). Dispatched Material facts

Original To: Clerk, U.S. District Court
Western District Court house
100 State Street
Rochester, N.Y. 14601

Copy To: Debra L. Martin, Assistant Attorney General
144 Exchange BLVD
Rochester, N.Y. 14601

Respectfully Submitted,

Dated: August 11. 2014
One City, N.Y. 14871

Markus King
- Signature - J